

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1425

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 77-1425

UNITED STATES OF AMERICA,

Appellee,

-against-

MICHAEL J. CAPANEGRO,

Defendant-Appellant.

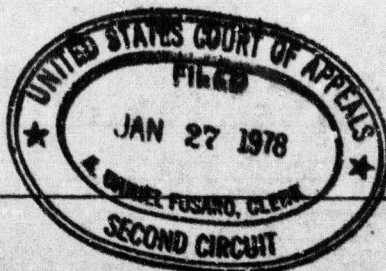
On Appeal From The United States District
Court For the Southern District of New York

Joint Appendix on Appeal

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

- v - :

MICHAEL CAPANEGRO, :

Defendant. :

INDICTMENT

76 Cr.

-----X

The Grand Jury charges:

On or about the dates hereinafter set forth, in the Southern District of New York, MICHAEL CAPANEGRO, the defendant, unlawfully, wilfully and knowingly did embezzle and cause to be embezzled, extracted and converted to his own use and the use of others, monies, funds and other assets, in the amounts hereinafter set forth of a labor organization engaged in an industry affecting commerce within the meaning of Title 29, United States Code, Section 402, to wit, Local 1101 of the Communication Workers of America, of which he was employed directly or indirectly as an attorney, in that on the dates and in the amounts hereinafter set forth he did submit bills to Local 1101 and receive payments from the Communication Workers of America Local 1101 Defense Fund for legal services allegedly rendered by him on behalf of the Local 1101 members named below when he then and there well knew that he had not in fact performed the claimed services and that said bills vastly overstated the nature and value of the services performed.

<u>Count</u>	<u>Date of Bill</u>	<u>Member's Name</u>	<u>Amount</u>	<u>Date</u>
1	Dec. 10, 1971	Michael Russo	\$1,850	Dec. 16, 1971
2	Dec. 16, 1971	Lloyd Harold	\$1,300	Dec. 16, 1971
3	Dec. 16, 1971	Frank Carlo	\$1,300	Dec. 16, 1971
4	Jan. 7, 1972	Nick Fittipaldi, Robert Ast and Dennis Lincoln	\$1,000	Jan. 26, 1972
5	Jan. 7, 1972	Paul Redliff	\$1,075	Jan. 26, 1972
6	Jan. 13, 1972	Hal Dolgin	\$1,075	Feb. 11, 1972
7	Jan. 13, 1972	Duncan Havenor	\$1,000	Feb. 11, 1972
8	Jan. 13, 1972	Gioza Franco	\$ 750	Feb. 11, 1972
9	Jan. 13, 1972	Robert Zeppulla	\$ 500	Feb. 11, 1972
10	Jan. 13, 1972	John Hyland	\$ 950	Feb. 11, 1972
11	Jan. 31, 1972	Joseph Cassidy	\$1,375	Feb. 24, 1972
12	Jan. 31, 1972	John Toomey	\$5,400	Feb. 24, 1972
13	Jan. 31, 1972	Anthony Califra	\$1,550	Feb. 24, 1972
14	Jan. 31, 1972	Michael Block	\$1,725	Feb. 24, 1972
15	Jan. 31, 1972	Robert Neri	\$1,350	Feb. 24, 1972
16	Jan. 31, 1972	Theodore Wallen	\$2,000	Feb. 24, 1972
17	Jan. 31, 1972	Steven Dzuday	\$1,850	Feb. 24, 1972
18	Feb. 17, 1972	Peter O'Neal	\$1,450	Feb. 29, 1972
19	Feb. 17, 1972	Robert Pomposallo	\$1,850	Feb. 29, 1972
20	Feb. 17, 1972	Walter Jaszezuk	\$ 250	Feb. 29, 1972
21	Feb. 17, 1972	Warren Lopez	\$ 750	Feb. 29, 1972
22	Feb. 17, 1972	Michael Antonucci	\$ 875	Feb. 29, 1972
23	Feb. 17, 1972	Jack Russek	\$ 675	Feb. 29, 1972
24	Feb. 17, 1972	Joseph McAleer	\$4,500	Feb. 29, 1972

(Title 29, United States Code, Section 501(c).)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

v.

MICHAEL CAPANEGRO,

Defendant.

76 Cr. 914

OPINION

GRIESA, J.

The indictment in this action charges 24 counts of violation of 29 U.S.C. § 501(c). The statute provides:

"Embezzlement of assets; penalty

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both."

Defendant Capanegro was tried by the court without a jury. Pursuant to Criminal Rule 23(c), the court announced general findings at the conclusion of the trial, and thereafter defense counsel requested that the facts be found specially.

The general findings with respect to the various counts are:

<u>Count</u>	<u>Finding</u>
1	Guilty
2	Guilty
3	Guilty
4	Not Guilty
5	Guilty
6	Guilty
7	Guilty
8	Guilty
9	Not Guilty
10	Guilty
11	Guilty
12	Guilty
13	Not Guilty
14	Not Guilty
15	Guilty
16	Guilty
17	Guilty
18	Not Guilty
19	Not Guilty
20	Not Guilty
21	Guilty
22	Guilty
23	Guilty
24	Guilty

The purpose of this opinion is to find the facts specially as requested by defense counsel.

Unless otherwise noted, I find the following facts proved beyond a reasonable doubt.

Capanegro is an attorney. During the relevant period in 1971-72 Capanegro was counsel to Local 1101 of the Communication Workers of America, under a \$25,000 per year retainer.

Commencing in the summer of 1971, and continuing until February 18, 1972, Local 1101 was on strike against New York Telephone Company.

The International Union of the Communication Workers of America had a so-called "Defense Fund." This fund was set up to take care of a variety of needs of a local union and its members during a strike. Expenses which might be paid out of the Defense Fund included legal bills of the union and members for matters arising out of the strike, and also other types of strike-related expenses.

The International Union made Defense Fund funds available to Local 1101 with respect to the 1971-72 strike against New York Telephone Company.

The present case arises out of legal fees collected by defendant from the Local 1101 Defense Fund during 1971 and 1972, over and above his regular retainer.

In the following description of the various counts in the indictment, the persons to whom legal services were rendered, or allegedly rendered, by Capanegro were members of Local 1101, unless otherwise noted.

First Count

On December 10, 1971 Capanegro rendered a bill to Local 1101, which included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
MICHAEL ROSSO

As and for all negotiations and conferences; appearances at Police Station; appearances in Court; preparation for trial and appearances on Trial Dates for Criminal charges in Riverhead: 1,850.00"

Capanegro received payment of this amount from Local 1101 on December 16, 1971.

Rosso was arrested December 3, 1971 in Suffolk County and charged with disorderly conduct, which is a "Violation", as distinct from either a felony or a misdemeanor. Rosso received a summons to appear in court

December 8. He appeared on that date with a friend, and without any lawyer. He then consulted Local 1101, and was given Capanegro's telephone number. Rosso spoke to Capanegro for a few minutes in one or two telephone calls, in which Capanegro stated that he would not handle the case because it would be tried in Suffolk County. Capanegro referred the matter to a Suffolk attorney, John Clayton. Capanegro spoke to Clayton, and told him that the legal fee would be paid by the union and wanted it to be nominal. Clayton agreed to charge \$250. Capanegro paid Clayton the \$250 on January 4, 1972. Clayton represented Rosso, and on March 24, 1972 Rosso received an Adjournment in Contemplation of Dismissal ("ACD").

It is not clear whether Capanegro's bill was sent before or after there had been an agreement with Clayton for the \$250 charge. However, Capanegro has admitted that at the time of the bill he had no intention of handling the matter personally and intended to bring in another attorney.

I find that Capanegro submitted the Rosso item knowing that it was almost entirely a statement of services which he had not rendered and had no intention

of rendering. I find that Capanegro obtained payment of \$1850 which he knew he was not entitled to. Moreover, after he had paid the \$250 to Clayton, Capanegro failed to send a corrected bill to Local 1101 or to refund to Local 1101 any part of the remaining \$1,600.

Counts 2 and 3

On December 16, 1971 Capanegro submitted a bill to Local 1101 for the following items:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
LLOYD HAROLD AND FRANK CARLO

As and for all negotiations and conferences; appearances in Court; Preparation for Trial and appearances on trial dates for Criminal Charges in re LLOYD HAROLD;	\$1300.00
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As and for all negotiations and conferences; appearances in Court; Preparation for Trial and appearances on trial dates for Criminal Charges in re FRANK CARLO;	1300.00
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Total Due	\$2600.00"
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Capanegro received payment of this amount from Local 1101 on the day the bill was submitted.

Lloyd Harold and Frank Carlo were arrested on December 13, 1971 and charged with Disorderly Conduct and Harassment -- both being "Violations". They were released

and told to appear in court December 22, 1971. Both Harold and Carlo spoke to Ricky Carnivale, president of Local 1101, who referred them to Capanegro for legal assistance. Harold and Carlo spoke to Capanegro's secretary (not to Capanegro), and Harold was given an affidavit to take to court requesting an adjournment. Harold and Carlo went to court on December 22, and for some reason did not present the adjournment affidavit. Carlo called the union and complained about not having a lawyer in court. A lawyer named Udoff, who normally handles workmen's compensation matters, came to court. Udoff represented Harold and Carlo in a brief hearing before the judge, who granted ACD's to both men.

Capanegro testified that he spoke to Harold on the telephone December 14 or December 15, and that he probably spoke to the Assistant District Attorney prior to the court date. I will give Capanegro the benefit of the doubt as to conversing with Harold, but I reject the contention that the defendant talked to the Assistant District Attorney.

Capanegro contends that the Harold and Carlo bill, like several others involved in the indictment, was one of the bills which he prepared shortly after

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the opening of a case, and that it reflected his estimate of the value of the services based on the nature of the offense, and his estimate as to what work would be required.

I find that Capanegro submitted this bill knowing that it was almost entirely a statement of services which had not been rendered. Separate items were written for Harold and Carlo, on what was the same case, in order to inflate the amount of the bill. I reject the contention that the bill should be interpreted as, or was intended as, a good faith estimate of services to be performed. I find that Capanegro obtained payment of \$2600 which he knew he was not entitled to.

Count 4

On January 7, 1972 Capanegro rendered a bill to Local 1101, which included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

AS AND FOR negotiations, conferences
and advice in regard to Criminal Charges
by Nick Fittipaldi, ROBERT AST, and DENNIS
LINCOLN in re Telephone Company 1,000.00"

Capanegro received payment of this amount from Local 1101 on January 26, 1972.

Union members Fittipaldi, Ast and Lincoln were involved in an incident January 3, 1972 leading to criminal charges by them against certain other persons. The criminal prosecution was handled by one or more Assistant District Attornies. However, Capanegro conferred with Lincoln and also probably with Fittipaldi. Capanegro appeared in court January 6, 1972 and introduced the three complainants to an Assistant District Attorney.

I cannot find beyond a reasonable doubt that the description of services was false. As to the \$1,000 fee, although it would appear high in relation to the amount of services performed, I cannot find beyond a reasonable doubt that Capanegro knew he was not entitled to this fee.

Count 5

Capanegro's bill of January 7, 1972 to Local 1101 included the following item:

"AS AND FOR PROFESSIONAL SERVICES
RENDERED IN RE:

all conferences, negotiations and
appearances at hearing; appearance
at arraignment for charges involving
Paul Radloff, felonious assault charges;
advice and legal briefs in regard thereto: 1,075.00"

Capanegro received payment of this amount from Local 1101 on January 26, 1972.

A week or two before Christmas 1971 Radloff was brushed by a car while he was in a picket line. President Carnivale of Local 1101 referred him to Capanegro. Radloff talked to Capanegro on the telephone for about 15 minutes. Capanegro advised Radloff to file a complaint against the driver of the car. Capanegro told Radloff he would defend him if any charge was made against Radloff.

Capanegro did nothing further in the matter. Radloff did not file any complaint against the driver. No proceedings were taken by anyone against Radloff.

As of the time Capanegro rendered his bill on January 7, 1972 defendant knew that this was a matter where services might or might not be needed depending upon what, if anything, developed. Defendant was simply "available to this man" (Tr. 1110).

I find that Capanegro submitted the Radloff item knowing that it was almost entirely a statement of services which had not been rendered. This item was not a good faith estimate of services to be performed.

A.

I find that Capanegro obtained payment of \$1075 which he knew he was not entitled to.

Counts 6 and 7

On January 13, 1972 Capanegro rendered a bill to Local 1101, which included the following items:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

HAL DOLGIN

As and for all negotiations, conferences, appearances in Court in regard to criminal Charges in re the above; appearance in Court and attendance at trial: \$1,075.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:

As and for all negotiations, conferences, advice, appearances in Court in regard to Criminal Charges with DUNCAN HEVENOR: 1,000.00"

Capanegro received payment of these amounts from Local 1101 on February 11, 1972.

Hevenor and Dolgin were involved in a scuffle at a picket line on January 10, 1972. The police advised making a complaint against one Sterling Hostern, as a protection against any complaint against Hevenor and Dolgin. Hevenor spoke to Carnivale, who said that the union lawyer would be in touch with Hevenor. No union lawyer ever communicated with Hevenor or Dolgin.

Nothing came of the case. The charge against Hostern was not pursued, and no proceedings were taken against Hevenor and Dolgin.

Capanegro testified that he was retained by the union to represent Hevenor and Dolgin. However, Capanegro performed no services of any substance.

I find that Capanegro submitted the items relating to Dolgin and Hevenor knowing that they were almost entirely statements of services which had not been rendered. Separate items were written for the two men in order to inflate the amount. These items were not good faith estimates of services to be performed. I find that Capanegro obtained payment of \$2,075 which he knew he was not entitled to.

Count 8

On January 13, 1972 Capanegro rendered a bill to Local 1101, which included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

GIOSE FRANCO

As and for all negotiations, conferences, advice appearances in Court in regard to Criminal charges with Giose Franco:

750.00"

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Capanegro received payment of this amount from Local 1101 on February 11, 1972.

On or about January 11, 1972 Franco was asked to come to a police station. When he arrived, he was told it was a mistake, but was asked by the police if he would answer questions about some incident. Franco refused to answer questions, and the matter went no further. A relative of Franco, but not a lawyer, was present at the police station.

Franco discussed the matter with a shop steward and with others at the union. He thought he would be receiving advice about a false arrest action, but no one called him about this, and the idea was dropped.

Capanegro was told of the incident either by someone at the union, or possibly by Franco. However, other than receiving this information, Capanegro performed no services.

I find that Capanegro submitted the Franco item knowing that it was almost entirely a statement of services which had not been rendered. This item was not a good faith estimate of services to be performed. I find that Capanegro obtained payment of \$750 which he knew he was not entitled to.

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Count 9

Capanegro's bill of January 13, 1972 to Local 1101 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

ROBERT ZAPPULLA

As and for all negotiations, conferences
in regard thereto; arrest for misdemeanor;
Dismissal of same: \$ 500.00"

Capanegro received payment of this amount from Local 1101 on February 11, 1972.

On January 7, 1972 Zappulla was involved in an incident relating to a telephone company truck. Zappulla was notified to appear at a police station. Before going to the station, he went to the union office, and was given the telephone number of Capanegro, whom he called. He told Capanegro about the circumstances, and Capanegro told him to deny everything at the police station, and to call back if he needed more help. Later, the police took Zappulla to the station, but released him. There were no further proceedings, and there was no further consultation with Capanegro.

Capanegro has testified that he made a telephone call to the police and negotiated Zappulla's release.

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I cannot find beyond a reasonable doubt that defendant either falsified this item or charged more than he thought he was entitled to.

Count 10

Capanegro rendered a bill to Local 1101 dated January 14, 1972 containing the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

JOHN HYLAND

As and for all negotiations, conferences and advice in regard to Criminal Charges involving JOHN HYLAND; appearances at hearing dates; Appearances at trial and adjourned dates: 950.00"

Capanegro received payment of this amount from Local 1101 on February 11, 1972.

On or about January 10, 1972, while Hyland was on picket duty, he was struck by a telephone company truck. Hyland telephoned Carnivale, who had Capanegro call Hyland. Capanegro advised Hyland to go to the police station and make a report. Hyland went to the station and filled out a complaint form. Nothing came of the case. Capanegro's explanation for this is that the driver of the truck could not be identified. Capanegro performed no further services after the telephone

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conversation, except speaking briefly to Hyland at the Playboy Club, and possibly also at Capanegro's office.

I find that Capanegro submitted the Hyland item knowing that it was almost entirely a statement of services which had not been rendered. This item was not a good faith estimate of services to be performed. I find that Capanegro obtained payment of \$950 which he knew he was not entitled to.

Count 11

On January 31, 1972 Capanegro rendered a bill to Local 1101, which included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

JOSEPH CASSIDY

As and for all negotiations conferences,
appearances in Court; preparation for
Trial; appearance on trial dates and
adjourned dates; trial of case:

1,375.00"

Capanegro received payment of this amount from Local 1101 on February 24, 1972.

Cassidy was arrested on January 14, 1972 in connection with a strike-related disturbance. He was charged with disorderly conduct. Cassidy called the union from the police station. He was taken to court the day of the arrest and told to appear again January 26. There

A18 A

was no lawyer for Cassidy at the police station, and a court-appointed lawyer represented him in the court proceeding on the day of the arrest.

The union gave Cassidy Capanegro's name. Cassidy conferred with Capanegro at his office. Capanegro agreed to represent Cassidy, but told Cassidy to get whatever witnesses were available, and have them appear in court.

Capanegro was in court with Cassidy on January 26. They waited about an hour to go before the judge. Cassidy telephoned the union from court about possible witnesses, but nothing came of this. When the matter came before the judge an ACD was granted, and that was the end of the case.

A union member by the name of Jacob Adler was arrested along with Cassidy in connection with the same incident. His case was handled on January 26, 1972 in the same proceeding with the case of Cassidy. The two cases were in effect one. In the bill of January 31, 1972 Capanegro included a separate item for Adler as follows:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
JACOB ADLER

As and for all negotiations, conferences
appearances in Court; preparation for
Trial; appearances on Trial Dates; and
adjourned dates: 1,325.00"

Capanegro received payment of this amount on February 24,
1972.

For some reason, the Adler item is not specifically included in the charges in the indictment. However, evidence about Adler was received as bearing on the Cassidy item.

This is a situation in which Capanegro made a court appearance and achieved a successful disposition of a criminal case against union members. Nevertheless, I find that the description of services in the Cassidy item was intentionally exaggerated, by referring to multiple court appearances and an actual trial. Also the treatment of the Cassidy and Adler cases as two separate items was a device to inflate fees. I find that, by means of the bill in the Cassidy matter Capanegro knowingly obtained payment beyond what he was entitled to.

Count 12

Capanegro's bill of January 31, 1972 to Local 1101 contained the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
JOHN TOOMEY.

As and for all negotiations, conferences, appearances in Court; preparation for trial on four Criminal Charges (misdemeanors) to wit: Criminal Possession of stolen property; Criminal tampering; Criminal Mischief and Larceny; appearances on Trial dates and adjourned dates; trial of case: 5,400.00"

Capanegro received payment of this amount from Local 1101 on February 24, 1972.

Toomey was arrested on January 19, 1972. He was at the Port Authority bus terminal and was caught breaking pay telephone dials off the telephones. Toomey was held overnight and taken to court the next morning, where he was represented by a Legal Aid lawyer and given a date to return to court -- January 26.

The union referred Toomey to Capanegro. Toomey conferred with Capanegro at his office. Capanegro met Toomey in court on January 26. Capanegro arranged to have the case disposed of by a plea of guilty to a charge of disorderly conduct and restitution of \$12.00 in payment for the dials.

Although this case again involves Capanegro's representation and court appearance leading to disposition of a criminal case, I find that both the description of services and the amount of the bill are grossly exaggerated, and were done so intentionally in order to obtain a fee which Capanegro knew he was not entitled to.

Count 13

Capanegro's January 31, 1972 bill to Local 1101 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

Anthony Califra	
As and for all negotiations, conferences,	
appearances in Court; preparation for	
Trial; appearances on Trial dates and	
adjourned dates; trial of case:	1,550.00"

Capanegro received payment of this amount from Local 1101 on February 24, 1972.

Califra was arrested January 19, 1972 and charged with disorderly conduct in connection with a strike-related incident. He was taken to the police station and told to appear in court February 7 for trial. Califra reported the problem to Carnivale, who called Capanegro. Califra also may have talked to Capanegro at

this time. Capanegro appeared with Califra in court on February 7. After a brief appearance before the judge, the case was dismissed.

The bill of January 31 recites certain services, such as court appearances and trial which had not been performed as of that time. However, as already indicated, Capanegro has advanced the theory that certain of the bills were good faith estimates of services to be performed, although, of course, they were not actually phrased as such.

Giving Capanegro the benefit of every reasonable doubt, I find that the Government has not proved beyond such a reasonable doubt that the Califra item was not a good faith estimate of the kind Capanegro describes.

Count 14

Capanegro's bill of January 31, 1972 to Local 1101 contained the following item:

"FOR PROFESSIONAL SERVICES RENDERED:

Michael Block

As and for all negotiations, conferences, appearances in Court;

preparation for trial; appearances
on Trial dates and adjourned dates;
trial of case: (Criminal Mischief,
1st degree: 1,725.00"

Capanegro received payment of this amount from Local 1101
on February 24, 1972.

Block was arrested January 20, 1972 in connection with a strike-related incident. He was taken to a police station and told to appear in court January 27. Block described the situation to a shop steward at the union. He was referred to Capanegro, and they conferred at Capanegro's office. Capanegro gave Block an affidavit to present in court seeking an adjournment, which was granted. Following that there was a second adjournment, and the matter was finally set for March 24. On the latter date Capanegro appeared with Block. No one from the telephone company was present, and the judge dismissed the case.

My remarks in connection with Count 13 apply here. I cannot find beyond a reasonable doubt that the Block item was not a good faith estimate of services to be performed.

Counts 15, 16 and 17

Capanegro's January 31, 1972 bill to Local 1101 contained the following three items:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

ROBERT NERI

As and for all negotiations conferences, advice, appearances in Court in regard to Criminal charges; preparation of trial; appearances on Trial dates and adjourned dates; dismissal of same;

1,850.00

"FOR PROFESSIONAL SERVICES RENDERED IN RE
THEODORE WALLEN

As and for all negotiations, conferences; preparation for trial; appearances on trial dates; & adjourned dates; dismissal of same:

2,000.00

"FOR PROFESSIONAL SERVICES RENDERED IN RE:

STEVEN DZUDAY

As and for all negotiations, conferences; advice; appearances in Court in regard to Criminal charges; preparation of Trial; appearances on Trial dates; and adjourned dates; dismissal of same: \$1,850.00"

Capanegro was paid these amounts by Local 1101 on February 24, 1972.

Neri and Wallen were members of Local 1102, located on Stated Island. Dzubay was a member of Local 1101.

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On January 12, 1972 all three were arrested for disorderly conduct in a demonstration near a telephone company building. They were taken to a police station and told to appear in court January 17, 1972.

Wallen and Neri called an official of Local 1102, who said that he would arrange for a lawyer. On January 17 the three men, and witnesses they brought, appeared in court. Capanegro appeared to represent them. None of the men had spoken to Capanegro prior to the court appearance. Capanegro was apparently retained by Local 1101 as a result of discussions between Local 1101 and Local 1102.

While waiting in court, Capanegro interviewed Neri, Wallen and Dzubay, and also their witnesses. At an initial appearance before the judge, Capanegro asked to have the case dismissed, but this was not done. There was a wait of about two hours. In a second appearance before the judge, the Assistant District Attorney agreed to have the case dismissed, and the judge granted an ACD.

A26

Capanegro billed separately for Neri, Wallen and Dzubay, although there was basically only one case. I find that the separate itemization and the description of services was intentionally calculated to collect a grossly exaggerated total fee of \$5700, which Capanegro knew he was not entitled to.

Count 18

On February 17, 1972 Capanegro submitted a bill to Local 1101, which included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
PETER O'NEAL

As and for all negotiations, conferences, appearances in Court, preparation for trial appearances on adjourned dates; trial of case:

\$1,450.00"

Capanegro received payment of this amount from Local 1101 on February 29, 1972.

O'Neal was involved in a strike-related incident on January 27, 1972. He was arrested on February 2 while he was in court watching the trial of Bruce Whyte, another union member. Whyte was being represented by Capanegro. O'Neal told Capanegro about his arrest and had a brief conversation with Capanegro in the court building that

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day. O'Neal was told to be in court on his own case February 23. He obtained an affidavit from Capanegro's office on which an adjournment was obtained to March 13, 1972. Capanegro appeared with O'Neal in court on March 13, at which time Capanegro talked to the Assistant District Attorney and appeared before the judge. The judge granted an ACD.

My remarks in connection with Count 13 apply here. I cannot find beyond a reasonable doubt that the O'Neal item was not a good faith estimate of services to be performed.

Count 19

Capanegro's bill of February 17, 1972 to Local 1101 contained the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. ROBERT POMPOSELLO

As and for all negotiations, conferences,
appearances in Court; appearances on
adjourned dates; preparation for trial;
Conferences with witnesses for trial of
case: (Assault in the 3rd degree) 1,850.00"

Capanegro received payment of this amount from Local 1101 on February 29, 1972.

A28 A

Pomposello became involved in an incident with another telephone company employee on January 18, 1972. On January 23 he was asked to go to the police station, where he was arrested and charged with third degree assault. He was told to appear in court on February 2.

Someone at Local 1101 gave Capanegro's name to Pomposello. Pomposello conferred with Capanegro at his office. The court hearing was adjourned to March 8. Pomposello and Capanegro appeared in court on March 8 and, against Capanegro's advice, Pomposello pleaded guilty to a reduced charge of harassment. Pomposello was given a conditional discharge.

My remarks in connection with Count 13 apply here. I cannot find beyond a reasonable doubt that the Pomposello item was not a good faith estimate of services to be performed.

Count 20

Capanegro's bill of February 17, 1972 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. WALTER JASZCZUK

As and for all negotiations, conferences, counselling, and advice in regard to pending charges which may be lodged against him:

250.00"

A29. #

Capanegro received payment of this amount from Local 1101 on February 29, 1972.

Jaszczuk was called by the police for questioning in connection with a strike-related criminal matter. He was given Capanegro's number by the union. Jaszczuk went to the police station, was questioned, and no charges or other proceedings resulted. Jaszczuk testified that, prior to and after the trip to the police station, he spoke to Capanegro's secretary. Capanegro believes that Jaszczuk spoke to him personally.

I cannot find beyond a reasonable doubt that Capanegro billed more than he thought he was entitled to.

Count 21

Capanegro's February 17, 1972 bill to Local 1101 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. WARREN LOPEZ

As and for all negotiations, conferences,
advice, appearances in Court in regard
to Criminal charges: 750.00"

Capanegro received payment of this amount from Local 1101 on February 29, 1972.

Toward the end of the strike Juan Lopez was involved in a scuffle with a telephone company foreman. He went to a police station because he heard that a complaint was filed against him. However, none had been, and he went home. He obtained Capanegro's telephone number from the union, and called Capanegro. He described the incident to Capanegro, who told him that, if the police came, Lopez should have his wife answer the door or otherwise try to avoid arrest. Capanegro said to call back if indeed Lopez was picked up. Nothing further happened in the matter, and Lopez never spoke to Capanegro again.

I find that Capanegro submitted the Lopez item knowing that it was almost entirely a statement of services which had not been rendered. This item was not a good faith estimate of services to be performed. I find that Capanegro obtained payment of \$750.00 which he knew he was not entitled to.

Count 22

Capanegro's bill of February 17, 1972 to Local 1101 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. MICHAEL ANTONUCCI

As and for all negotiations, conferences,
advice, appearances in Court in regard to
Criminal Charges: 875.00"

Capanegro received payment of this amount from Local 1101
on February 29, 1972.

On January 23, 1972 Antonucci got in a fight
with a friend, which had nothing to do with the strike.
A union official, Fitzgerald, heard that a warrant was
out for Antonucci's arrest and told this to Capanegro.
Capanegro spoke to Antonucci at the union office.
However, Antonucci told Capanegro that he had his own
lawyer. Antonucci's lawyer was named Schwartz. Capanegro
performed no services in the case, and never communicated
with Schwartz.

I find that Capanegro submitted the Antonucci
item knowing that it was almost entirely a statement of
services which had not been rendered. This item was not
a good faith estimate of services to be performed. I find
that Capanegro obtained payment of \$875 which he knew he
was not entitled to.

A32

Count 23

Capanegro's bill of February 17, 1972 to Local 1101 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
JACK RUSSEK

As and for Conferences, Negotiations and
Appearances at Hearing, Appearance at
arraignment for charges involving Jack
Russek; legal advice in regard thereto 675.00"

Capanegro received payment of this amount from Local 1101 on February 29, 1972.

On January 25, 1972 Russek was in a picket line in front of a telephone company garage. He was asked to move by the driver of a truck. When Russek did not move, the truck hit or brushed against Russek. Russek went to a police station and complained. Russek was told to appear in court on March 3. He called the union and was told to speak to Capanegro. He talked to Capanegro on the telephone for a few minutes. Capanegro told him that the Assistant District Attorney would handle the case. Russek had no further communication with Capanegro. Russek went to court alone on March 3 and dropped the charge.

A33

I find that Capanegro submitted the Russek item knowing that it was almost entirely a statement of services which had not been rendered. This item was not a good faith estimate of services to be performed. I find that Capanegro obtained payment of \$675 which he knew he was not entitled to.

Count 24

Capanegro's bill of February 17, 1972 to Local 1101 included the following item:

"FOR PROFESSIONAL SERVICES RENDERED IN RE:
JOSEPH McALEER

As and for all negotiations, conferences,
appearances in Court; preparation for
trial; conference with witnesses and
with client; appearances on trial dates
and adjourned dates; trial of case;
(Felony and Misdemeanor) \$4,500.00"

Capanegro received payment of this amount from Local 1101 on February 29, 1972.

On January 31, 1972 McAleer was involved in a fight in a picket line. During the evening after the fight McAleer was at a union meeting, and heard that the police were looking for him. He spoke to Capanegro

A34 A

briefly and told Capanegro that he expected to be arrested. McAleer went alone to the police station where he was arrested. He was released on bail. On February 3 McAleer met with Capanegro and discussed the case. Capanegro said that the case looked bad.

After this meeting McAleer decided he did not want Capanegro to represent him, and retained another lawyer by the name of Friedman. McAleer told this to Carnivale, but not to Capanegro. However, McAleer did not request any services from Capanegro prior to the date of Capanegro's bill, or ever.

The union paid a retainer to Friedman of \$1,000 at the outset of Friedman's services.

In August 1972 Friedman made a written motion to dismiss the case, which was granted. By this time Capanegro was corresponding with Friedman in a contrived effort to act as "co-counsel" for the purpose of justifying Capanegro's undeserved fee of \$4,500. Friedman billed the union an additional \$1,500 for his own services, which bill he sent to Capanegro. Capanegro paid this bill out of his own funds. This left Capanegro with a net of \$3,000, none of which he refunded to the union.

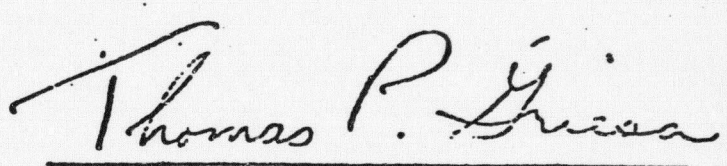
A35

Capanegro knowingly billed for services he had not performed. This was not the case of a good faith estimate of services to be performed. At the very least, Capanegro should have refunded the \$4500 to Local 1101 when he learned that Friedman was in the case, which was no later than mid-March. Capanegro's payment of \$1500 to Friedman still left Capanegro with \$3000 which he knew he was not entitled to.

Conclusion

Within the meaning of 29 U.S.C. § 501(c), I find that Local 1101 was a labor organization and that Capanegro was employed by it. As to all counts on which I have found Capanegro guilty, I find that he unlawfully and willfully embezzled, stole, abstracted, or converted to his use funds of Local 1101 in violation of the statute.

Dated: New York, New York
July 19, 1977



THOMAS P. GRIESA
U.S.D.J.

JUDGE GRIESA

0708 1 0000 CATANEGRO, MICHAEL J. 01

U.S. TITLE/SECTION: 29:501(c) OFFENSES CHARGED: Embez. of Union Funds. ORIGINAL COUNTS: 24

U.S. DISTRICT COURT, E.D. NY

ARREST or U.S. Custody Began: High Risk Date: 9-24-76 INDICTMENT X Information: 9-24-76 ARRAIGNMENT: 9-30-76 TRIAL: 1-10-77

Summons Served: Indict. Waived: Superseding: Indict/Info: Final Plea: Trial Began: 6-20-77 Trial Ended: 7-7-77

Disposition of Charges: 7-7-77 9-27-77

U.S. Attorney or Asst: Don D. Buchwald 791-0069

ATTORNEYS: Michael Rosen, Esq. 39 E. 68th St. - N.Y. 10021

5.5.3

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10/21

10-14-76

12-8-76

12-8-76

— OVER —

DATE	DOCUMENT NO.	PROCEEDINGS
9-24-76		Filed indictment.
9-30-76		AUSA Buchwald represents that copies of all documents submitted by deft. are available to him instantler. Not guilty plea entered by Court's direction.....Palmieri, J. Deft. (atty not present) - Court directs a not guilty plea be entered. Ordered F/P. Assigned to Griesa, J. for all purposes. Deft. R.O.R.....Palmieri, J.
10-14-76		P.T.C. held defts atty Roy Cohen & AUSA present. Motions to be submitted by 11-17-76**trial date 1-10-77 Rm. 619...Griesa, J. 3
12-8-76		Filed deft's Affidavit and Notice of Motion for an order to dismiss indictment and for discovery.
12-8-76		Filed deft's Memorandum of Law in support of their motion to dismiss indictment.

((Clerk of the Court))

A.37

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

CAPANEGRO, MICHAEL J.

1976 914 01
Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	GRIESA, J	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
6-29-77	TRIAL CONTINUED					
6-30-77	TRIAL CONTINUED					
7-7-77	TRIAL CONTINUED					
	The Court finds DEFT. GUILTY on Counts 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 15, 16, 17, 21, 22, 23, and 24. The Court finds DEFT NOT GUILTY on Counts 4, 9, 13, 14, 18, 19 and 20. Sentence adj to September 13, 1977 9:30. P.S.I. Ordered continued FOR GRIESA, J					
7-19-77	Filed Opinion No. 46170 For the reasons stated - - Within the meaning of 29 U.S.C. §501(c), I find that Local 1101 was a labor organization and that Capanegro was employed by it. As to all counts on which I have found Capanegro guilty, I find that he unlawfully & wilfully embezzled, stole, abstracted, or converted to his use funds of Local 1101 in violation of the statute. GRIESA Jm-n notified US Atty.					
8-17-77	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: June 20, 21, 22, 23, 27, 1977.					
8-17-77	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: June 28, 29, 30, 1977.					
8-29-77	Filed transcript of record of proceedings, dated 7-5-77					
10-05-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from judgment (9-27-77) copy mailed to Saxe Bacon & Bolan, 39 East 68th St. NYC 10021, as attys for deft and copy to U.S. Attorney.					
9-27-77	**** Filed judgment (Atty. R. Cohn, present) The deft. is committed for imprisonment for a period of ONE YEAR and ONE DAY on each of cts. 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 15, 16, 17, 21, 22, 23 and 24 to run concurrent with each other... Deft. on continued continued bail pending appeal..... Griesa, J..... Entered on docket Oct. 17, 1977.....					
10-17-77	Issued commitment and copies....					
10-21-77	Filed AMENDED notice of appeal from amended judgment entered 10-13-77... Copy given to AUSA and deft C/O Saxe Bacon & Bolan 39 E. 68th St. NYC....					

A TRUE COPY
RAYMOND F. THEHART, Clerk

AO 256A

Interval (per Section III) Start Date End Date Ltr. Total Code Days

U. S. DISTRICT COURT 11 A.39

United States of America vs.

United States District Court

DEFENDANT

MICHAEL CAPAREGRO

SOUTHERN DISTRICT OF NEW YORK

76 CR. 914 (WFG)

DOCKET NO. 1

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government Don Buchwald, AUSA
the defendant appeared in person on this date

MONTH DAY YEAR
Sept. 27, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Ray Conn, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding ~~XXXXXX~~

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly embezzling and cause to be embezzled, extracted and converted to his own use and the use of others, monies, funds and other assets, for legal services allegedly rendered by him on behalf of Local 1101, Communication Workers of America when he knew and there will be that he had not in fact performed the claimed services and that said bills vastly overstated the nature and value of the services performed as charged in Counts 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 15, 16, 17, 21, 22, 23 and 24.

29, USC, §501 (c)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ONE YEAR AND ONE DAY on each of counts 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 15, 16, 17, 21, 22, 23, and 24 to run concurrent with each other.

SENTENCE OR PROBATION ORDER

Defendant on continued bail pending appeal

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

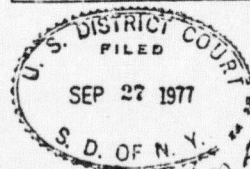
In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probationary period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke and recommence the probationary period.

The court hereby recommends to the custody of the Attorney General and recommends.

COMMITMENT TO CUSTODY

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

OCT 17 1977



ENTERED BY

U.S. Marshal

U.S. Marshal

9-27-77

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
: UNITED STATES OF AMERICA, :
: :
: vs. : 76 Cr. 914
: :
: MICHAEL J. CAPANEGO, :
: :
: Defendant. :
: :
-----x

Before:

HON. THOMAS P. GRIESA, District Judge.

New York, February 24, 1977;
2.00 o'clock p.m.
(Room 619)

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York;
BY: DON BUCHWALD, Esq.,
Assistant United States Attorney.

ROY COHN, ESQ., and
MICHAEL ROSEN, Esq.,
Attorneys for Defendant.

BARLOW, KATZ & BARLOW, Esqs.,
Attorneys for Miss Kisarewski;
BY: MISS JOYCE K. BARLOW.

MR. BUCHWALD: Ready for the Government, your Honor.

MR. COHN: Ready for the defendant, your Honor.

THE COURT: I think the thing is pretty well laid out in the briefs, but if anyone wishes to make any further argument I will be happy to hear it.

Do you have anything further, Mr. Cohn?

MR. COHN: This is on the motion to dismiss, your Honor?

THE COURT: Yes.

MR. COHN: Your Honor, I agree. I think it is pretty well briefed on both sides. I am not talking now about the grand jury inspection or anything like that. I observed when we had the conference in chambers that your Honor was not viewing that too seriously.

There is, it seems to us, one extremely serious motion here. We feel after reading the cases, reading this indictment a number of times, that they simply are using a statute which is clearly inapplicable in this case. Mr. Capanego was not an officer, director, or employee. He was not in a fiduciary capacity with this union which gave him the power to exercise dominion over the funds of the union and prevent that or cause that,

1 pgs

2 against which the statute was directed. He was a
3 lawyer who was hired, one of a number of lawyers hired,
4 by the union.

5 Your Honor, let's say he was hired as counsel,
6 general counsel -- anything you want. The fact of the
7 matter is, your Honor, he could not, and no one suggests
8 he did not, have the power to sign a check, cause a
9 check to be issued, cause funds to be taken out of the
10 union in any way. That was done by the president and
11 the treasurer and those who were so empowered.

12 It seems to me, your Honor -- and Mr. Buchwald
13 doesn't take any advice in these circumstances -- but if
14 this is the way they wanted to proceed what they should
15 have done, I suppose, was bring in some kind of different
16 indictment which might have covered this defendant, or
17 a different kind of charge. The way this is consti-
18 tuted now, he is not a person who is covered by this
19 statute.

20 I had a case ver- similar to that down in
21 this District involving a John McCarthy in a union in Long
22 Island, and when we made a presentation -- the case was
23 much closer than this one -- the Assistant United States
24 Attorney who had it declined prosecution under this
25 statute. That case was closer than this.

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I just, for the life of me -- and now I am not pressing any of these other motions before your Honor -- see where the Government has offered your Honor anything which would show that a lawyer who was hired by this union is in any way a person covered by the statute, no matter how you stretch Congressional intent, or anything like that. It is the wrong statute and he doesn't cover it.

THE COURT: The only thing that strikes me is this:

I think in statutes like this -- and it is the same thing in the security laws -- obviously there are limited under the language to security laws, but speaking in a somewhat general way the Congress, it seems to me, recognizes there are other devices by which union funds can be misappropriated, and I really think that you have to read the statute with that in mind so that if the misappropriation comes about in something other than a narrow way, this is the fellow who has the check cashing power, the treasurer, and so forth, those are the kind of obvious ways, but I just cannot conceive of the idea that Congress was limiting it to those ways. These statutes are generall a little more sophisticated than that.

1 pgs

2 THE COURT: The problem is this:

3 Let's forget ways. Talk about people.

4 This man could not write a check, could not compel anyone
5 else to do it. Your Honor has to remember that there
6 is no conspiracy charge in this indictment, no aiding or
7 abetting him in this indictment. If he wanted to
8 indict the president of the union, if they wanted to
9 indict the treasurer under this section, fine.

10 THE COURT: What if it is somebody in purchas-
11 ing -- I don't know who that would be -- I don't know
12 it exactly, but suppose it is somebody who puts in phone
13 vouchers and travel vouchers. He is an employee, a
14 public relations fellow, or something like that, and he
15 puts in a voucher for phone, travel, entertainment, or
16 whatever. He doesn't have check cashing; he doesn't
17 write the checks; he is not the treasurer; he is not
18 in control of the phones. But wouldn't his offense be
19 covered here?

20 MR. COHN: I don't think it would be.

21 This is a very specific statute. Look for other laws
22 under which you could prosecute people for things, but
23 this is a very specific statute. The thrust of it
24 goes to the relationship, and it says so, with the
25 union.

pgs

1
2 THE COURT: By which he is employed directly
3 or indirectly.

4 MR. COHN: I say this is not a case which says
5 this applies to an independent contractor. He was not
6 even hired by this union. His representation was of --

7 THE COURT: It was really dual.

8 MR. COHN: I don't know. As I see it, he
9 was made one of a number of lawyers and law firms who
10 were made available to union members, according to their
11 own choice, whether they took him or took the firm, or a
12 couple of these other firms whose names have been
13 mentioned. But I am saying, your Honor, this seems
14 to be focusing on the fact:

15 If there is something wrong there should be
16 something done about it.

17 I am focusing in on this: I don't think an
18 independent contractor, a lawyer, who is a number of
19 lawyers, who has his own practice and does certain work,
20 and, let's say, a lot of work for union members, who
21 can't sign a check, can't cause a check to be signed --
22 they have a clear-cut allegation here. They are
23 accusing the president of the union, the treasurer, the
24 man from the fund who had the check signing power, and all
25 of that. There is no question that these people signed

1 pgs

2 every one of the checks, but absent conspiracy --

3 THE COURT: What do you mean they are accusing
4 them?

5 MR. COHN: They are not. The facts accuse
6 them, but they pass them over and --

7 THE COURT: Maybe they are completely innocent
8 and whoever was doing the paying was deceived by false
9 invoices as in the case I posed to you where, say, the
10 public relations man was clearly employed. There is no
11 question about that. He submits phone vouchers, or
12 whatever you call them, and the fellow in the controller's
13 department, or the paymaster, whoever it is, he is not
14 a conspirator. He just relies on phone invoices, but
15 the guy who submitted the phone invoices is guilty.

16 MR. COHN: I don't think that's the case here
17 at all. I don't think the Government so states. I think
18 tje Government clearly by reading the indictment itself
19 and the minutes and everything else supporting it, they
20 are saying that the president of the union and the other
21 signatory at the time -- and certainly the president of
22 the union was the one who hired this man, was the one who
23 supervised his work, and it was just not a question of
24 a voucher coming through the mail and being rubber stamped
25 and put through -- I don't think the fact pattern fits.

1 pgs

2 If it did fit, I still say that if somebody sells that
3 bill to a union and there is something wrong with the bill,
4 that does not subject that person to the jurisdiction
5 of this particular statute which is designed, and aimed
6 at people in a fiduciary position with a nexus to the
7 union, which has to go beyond being an independent
8 contractor.

9 Having lived with the statute, to some extent,
10 in other matters and read the cases, I just do not think
11 that an extension of the application of the statute
12 over to a lawyer hired in rendering services to union
13 members, who is not charged with aiding and abetting,
14 conspiracy, or anything, but stands naked as someone who
15 has to have been in a direct or indirect employee
16 fiduciary capacity for the union, insofar as the trans-
17 mittal of union funds are concerned, when you view it in
18 light of the fact that this all had to be declared by a
19 committee, a Commission, a check signed by others and
20 all of that, you just -- maybe there is something wrong
21 some place, assuming the Government's facts to be correct,
22 but you don't absent conspiracy, aiding and abetting; I
23 just say this individual is not covered by this statute
24 on the bare bones allegation of this indictment, and I
25 have not seen Mr. Buchwald produce one case.

1 THE COURT: I would agree with you unless I
2 missed something. I don't think there is a case.
3 I don't know of any. So we have to go on the interpreta-
4 tion of the statute.
5

6 MR. COHN: What do you really have? There
7 are not too many secrets left. Mr. Buchwald has supplied
8 a great deal of documentation. He is saying, in
9 effect, that the man charged too much and that in certain
10 cases he charged for services which he didn't actually
11 perform. He had a form way of sending out bills:
12 conferences, adjournments, trials. In all cases in
13 which he billed, exact procedural steps were not taken.
14 There were some where they said he did a minimal amount
15 of work and others where he did next to nothing. There
16 are others where he concedes he did a lot of work. So
17 there, really, based again having in mind the settlement
18 of the civil suit with prejudice before Judge Frankel
19 and all of that, you got a case here when you cut through
20 it you are saying a lawyer overcharged in certain cases,
21 didn't overcharge in other cases, and that's what this is.
22 But it does not call for a union embezzlement statute.
23 It is a case --

24 THE COURT: It depends on the facts. If the
25 Government can prove that he knowingly submitted phone

pgs

invoices, say, for services he didn't render -- I keep using the term "phone invoices" -- that depends on the proof. It may be that the issue you raise, your basic issue, is an issue of law. I don't want to hold any assurance that I feel there is a lot of factual issues there. It could be a different result at trial. I am inclined to deny the motion, but I certainly would say this:

It would be obviously without prejudice to renewal after the evidence is in.

Maybe there would be light thrown on that interpretation question by the specific evidence. Certainly, as far as the nature of the act, whether it is simply a matter of the appropriateness of the charge, if that's all there is to it there would not be any crime, but that would depend on the facts.

The Government, I assume is going to prove something more than just a debatable question about the appropriateness of the charge.

Anyway, let me hear from Mr. Buchwald.

MR. BUCHWALD: Your Honor, very briefly, we will include in our opening, whether it be to your Honor or to the jury, depending on where we are going, it will be indicated at the conclusion of our evidence that if

1 pgs

2 it is felt that this is simply a question of reasonable-
3 ness of legal fees, that is not a crime and should be
4 thrown out and an acquittal should be prompt; but we
5 think that the proof will show much more than that.

6 As to the legal issues which Mr. Cohn has
7 directed himself to, I believe that those are set forth
8 probably as well as we can in our papers.

9 THE COURT: There is no reported decision
10 interpreting this statute as applying to this precise
11 situation?

12 MR. BUCHWALD: That's correct.

13 There have been certain cases of pleas by
14 accountants who were not on the payroll, somewhat like
15 outside consultants, that have resulted in case law.
16 They were pleas not precisely on this fact issue, which
17 suggests by way of some of the underlying facts, that may
18 go to the ultimate determination of the issue that the
19 evidence will establish that the representation here when
20 you cut through the form is really employment by the
21 union.

22 In his notice of appearance Mr. Capanego
23 indicated himself as being retained by the union. Mr.
24 Capanego submitted \$117,000 or thereabouts in bills during
25 this four-month period. The only other representation

pgs

I am aware of is by some attorneys who, in fact, represented the people that Mr. Capanego billed for, and by a Friedman & Friedman, in one instance, which is alluded to in the papers, the standard procedure I believe, that we will develop at the trial, the union simply referred all of the incoming calls to him. He was simultaneously, of course, as the papers indicate -- and I do not believe it is in dispute -- on retainer to the union, a separate \$25,000 retainer.

I believe the evidence will suggest that in his capacity as general counsel to the local he, more or less, was the one who was approving the bills which he submitted in his capacity.

THE COURT: We started late. Let's not repeat things.

I would like to put my rulings on the record now. It would help us to know where we stand.

My rulings are as follows:

This is a multi-count indictment against the defendant Michael Capanego charging him with embezzlement of union funds in violation of 29 U.S.C. 6501(c).

The defendant has moved to dismiss the indictment on the following grounds:

First, that he is not, or was not, employed

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2 by a labor organization within the meaning of the
3 statute.

4 Secondly, that he did not receive funds of
5 a labor organization within the meaning of the statute.

6 Third, that the grand jury had insufficient
7 evidence to warrant the return of the indictment.

8 Fourth, that even if the above grounds are
9 insufficient, the particular conduct charged in the
10 indictment did not constitute, would not constitute, a
11 violation of the statute.

12 The motion is denied in respect to all
13 grounds.

14 The most serious ground relates to the inter-
15 pretation of the statute, as to whether Mr. Capanego, in
16 his capacity as a lawyer on retainer for the union, and
17 in his capacity in connection with the events in question,
18 are being responsible for handling legal problems of
19 individual members, whether he was somebody employed by
20 the labor union within the meaning of the statute.

21 There is no case directly in point. Obviously
22 Mr. Capanego was not an employee of the union in the narrow
23 sense of that word. He was presumably an independent
24 contractor.

25 I am stating this obviously without benefit of

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the specific evidence, but that's the way it seems to shape up and probably will shape up under the evidence.

In my view the statute is broad enough to cover the type of employment indicated here, and I won't elaborate. I will simply state that as my ruling.

This ruling is without prejudice to a renewal of the motion at the trial when the evidence is further developed and may illuminate the issues further.

As to the motion or the contention that the defendant did not receive funds of the labor organization, that I also overrule at this point subject to possible review at the time of the trial.

I think I have already, at an earlier hearing, indicated my disposition on the question of the sufficiency of the evidence before the grand jury to warrant the return of the indictment, and I find no merit in that contention. I would not review the grand jury minutes. I think the law is against that kind of procedure.

In my view the indictment sufficiently charges conduct made illegal by statute.

I neglected to mention another ground of the motion, and that is that the prosecution is barred by collateral estoppel. I overrule that contention.

That disposes of the motions except for the

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2 procedural motion about a bill of particulars.

3 Perhaps there are some other procedural matters
4 we have to cover.

5 As you know, we usually handle the discovery,
6 incouding bills of particular, informally --

7 MR. COHN: There is no problem. I think we
8 are satisfied. Mr. Buchwald has given us cooperation.

9 THE COURT: Something has come to my office
10 about the problem of Mr. Capanego's secretary.

11 MR. COHN: It is not our problem.

12 MR. BUCHWALD: Mrs. Barlow represents Judy
13 Kisarewski.

14 MRS. BARLOW: My name is Joyce Barlow, your
15 Honor, and I am from the office of Barlow, Katz & Barlow.

16 I have sent a letter to your office with a
17 copy of the letter from Miss Kisarewski's physician.
18 I have the original in court.

19 THE COURT: We have a trial date set for
20 when?

21 MRS. BARLOW: March 14th.

22 The problem is that I have talked with her
23 physician as well as having reviewed the letter. She is
24 scheduled to give birth somewhere around April 22nd.
25 Normally this would not pose a problem. She would be

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able to come to court without any difficulty. However, she has experienced during this pregnancy severe hypertension, and the doctor is watching her very carefully with the possibility of toxemic pregnancy.

In light of those two problems he feels that it is medically unsound to permit her to go through the strains not only of the traveling back and forth from the court to her home in Queens, but the emotion strain placed upon an individual by being subject to what I expect will be a rather intense cross-examination.

I understand the Government has a great problem with regard to the speedy trial rule.

THE COURT: Have you considered this? This has come to your attention?

MR. BUCHWALD: Yes, your Honor.

THE COURT: What is your solution?

MR. BUCHWALD: It may be a function of the position that the defense takes. We don't want to do anything would jeopardize Mrs. Kisarewski's health. We are concerned, however, that an appropriate record be made if there is going to be an adjournment of any kind, and that her physical be solicited.

We have two recommendations, two alternate approaches which we are amenable to. One is if the trial

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is to proceed non-jury we could take the other evidence and then take Mrs. Kisarewski's evidence at a later time. It may well be --

THE COURT: We have talked earlier about the waiver of the jury. Have you arrived at a position?

MR. COHN: Frankly, I didn't want to talk to Mr. Capanego about that because I had been hopeful that your Honor would dismiss this on the ground of inapplicability of the statute. I had a very limited mind in viewing the case until that was out of the way. I will talk to him and we will communicate with Mr. Buchwald.

On this point, your Honor, Mr. Capanego is a practicing lawyer. He thought that this was all over with once before, when the civil judgment was disposed of, with prejudice, before Judge Frankel. He has been going through all of this all over again and his practice has been severely damaged. We are not going to consent to any waiver of the time rule and we are ready to go forward to trial on March 14th.

As far as this one witness is concerned, I don't know what her basic importance is or is not, but the fact is on every trial that comes along I suppose both the Government and the defense have a problem about witnesses who are ill or unavailable, but that, I suppose,

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cannot stop trials from going ahead.

THE COURT: What is your proposal?

MR. BUCHWALD: One proposal --

THE COURT: There still may be a waiver of the jury, but that can't be determined at the moment, until there is a waiver there is no waiver.

MR. BUCHWALD: That's correct. If that can't be done I think in view of the witness' importance to the case we suggest Mrs. Barlow make a formal application for a subpoena. If your Honor were disposed on the medical facts to quash the subpoena, which we will not withdraw, then we would simultaneously make a motion to adjourn the trial until she is available.

THE COURT: You regard her as crucial?

MR. BUCHWALD: Yes, your Honor. We would be willing to make an offer of proof as to her expected testimony, and we would ask that specific findings be made on the record as to this being in the public interest.

THE COURT: In other words, relating to the speedy trial?

MR. BUCHWALD: Yes. That's correct.

We had hoped, particularly in view of the indications all along, that the defense was considering, seriously considering, waiving a jury, and that perhaps

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2 the problem could be avoided by simply splitting the
3 trial, having everything and then having her.

4 I would indicate, lest there be silence on the
5 record -- Mr. Capanego, of course, has been aware through
6 Mr. Rosen -- that at no time were the grand jury proceedings
7 terminated in conjunction with the settlement of the civil
8 suit.

9 THE COURT: Don't get into that. There is
10 no reason for that.

11 I think what needs to be done is this:

12 As of the present time there is no waiver of
13 the jury. As of the present time there is no waiver of
14 rights under the Speedy Trial Act, and that means that
15 we have to proceed formally on this, so this would involve
16 a motion to quash the subpoena.

17 MRS. BARLOW: I had intended to file such a
18 motion this week. However, my indication, after speaking
19 with your chambers, was that perhaps I should await the
20 outcome of this.

21 MR. BUCHWALD: We have no objection to that
22 being done orally if the letter from the doctor can be
23 made part of the record.

24 THE COURT: Frankly, I am a little late.
25 I would rather you make the motion on paper and have an

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affidavit or affidavits. That can be responded to and we can make whatever findings have to be made, and then if there is simplification about the jury question that will appear.

I won't count on any jury waiver until I hear about it.

Thank you.

(Time noted: 2.30 p.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
-vs- :
MICHAEL CAPANEGRO, : 76 Cr. 914
 :
Defendant :
-----X

B E F O R E :

HON. THOMAS P. GRIESA,
District Judge

New York, New York
September 27, 1977--9:45 a.m.

A P P E A R A N C E S :

ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the
Southern District of New York
BY: DON D. BUCHWALD, ESQ.,
Assistant United States Attorney

SAXE, BACON & BOLAN, ESQS.,
Attorneys for the Defendant
BY: ROY M. COHN, ESQ.,
MICHAEL ROSEN, ESQ., Of Counsel

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MR. COHN: Your Honor, in the rush of this other trial I'm in the middle of we inadvertently failed to send Mr. Buchwald a copy of the letter we sent to your Honor in reply to Mr. Fiske's letter.

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MR. BUCHWALD: It was shown to me.

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MR. COHN: I appreciate that, your Honor, and I apologize.

9

THE COURT: All right.

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As you know, I avail myself of the procedure which exists in this court and I requested a sentence recommendation from the United States Attorney's office, and I have that. I also have the pre-sentence report and I also have Mr. Cohn's response and, of course, I have a lengthy statement that was submitted to the probation officer by Mr. Capanegro.

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The government can make any statement it wishes but perhaps Mr. Buchwald should have an opportunity to read the letter and Mr. Cohn can go first.

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MR. ROSEN: Your Honor, while Mr. Buchwald is reading, perhaps for the record I would just like to indicate the renewals of the motions, all motions previously made, so that the record is clear about our position on the motions.

THE COURT: Yes.

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2 MR.ROSEN: We do renew the motions that we
3 made throughout the trial and pre-trial based on our feeling
4 of lack of jurisdiction under the section since Mr.Capanegro
5 was not an employee, directly or indirectly, of the labor
6 union.

7 We also renew our motion that these funds
8 were not funds of the labor organization since the section
9 itself treats this type of fund as a trust fund in a separate
10 section of the law. We just renew those motions, your
11 Honor.

12 THE COURT: I deny them.

13 MR.ROSEN: In addition, your Honor, in a
14 motion to set aside your Honor's findings, I just want the
15 record to indicate most respectfully that we feel very
16 strongly that there was a total lack of evidence before this
17 Court on the issue of criminal intent, the intent to commit
18 a crime.

19 We would refer your Honor to the settlement
20 with the union and the general release which was given to
21 Mr. Capanegro, the withdrawal by the alleged victim of
22 charges of fraud, deceit and unauthorized payment, and this
23 union, as your Honor knows from the record, was represented
24 by a leading labor lawyer and there was a release given to
25 Mr. Capanegro.

2 Further, most respectfully, your Honor fails
3 to credit Mr. Capanegro with earning even one cent of the
4 monies. In other words, if he charged a thousand dollars
5 and wasn't entitled to the full thousand, your Honor failed
6 to find that even for opening a file, having one conversa-
7 tion, that maybe he is entitled to something as a lawyer.

8 Further, Judge, there was no proof at all
9 that there was a reliance on the wordings of the bills which
10 precipitated the payments. There was no testimony at all
11 as to that. Again the criminal intent is something that we
12 maintain was never proven during the trial. We also main-
13 tain that there was no proof that the fees charged were
14 criminally unlawful. There was not even any proof that they
15 were high or that other lawyers would not have charged
16 such a fee. The government put nothing in on rebuttal what-
17 soever.

18 I understand your Honor has a perfect right
19 not to credit Mr. Capanegro's testimony; that is your
20 Honor's obligation and your Honor did not credit all of it,
21 obviously. But there was nothing offered in rebuttal, Judge,
22 that these fees were not a proper fee for the services
23 charged and for the performance of Mr. Capanegro, taking into
24 account Mr. Capanegro's experience and ability to handle
25 these matters. Furthermore, your Honor didn't take into

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2 account the fact that each and every case, including those
3 that he was not indicted for -- that there were successful
4 results. What else can a lawyer do for a client but get
5 a successful result?

6 There was no testimony offered by the govern-
7 ment expert or otherwise that what Mr. Capanegro did was
8 improper. Your Honor found lack of guilt on seven counts,
9 finding that in those counts you believed, most respectfully,
10 that Mr. Capanegro intended to do what he said he would do.
11 If the government had not prove beyond a reasonable doubt
12 that he didn't intend to do it, I find no distinction in
13 those seven counts and in the seventeen counts that your
14 Honor did find guilt.

15 Again, Judge, there was no proof in this case
16 of kickbacks, conspiracies or anything like that. I most
17 respectfully submit that there was insufficient proof
18 offered by the government on the seventeen counts that your
19 Honor found him guilty on and I won't go through any of them
20 right now except to say that on those counts that your Honor
21 did find guilt, I most respectfully submit that there was
22 insufficient evidence to establish that Michael Capanegro
23 intended to commit a criminal act.

24 THE COURT: What you are presenting is ob-
25 viously, basically, a renewal of arguments which were heard

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2 before. This was a hotly contested case and the arguments
3 pro and con, the different sides were presented very ably
4 and with great force by both sides. I have no objection
5 whatever -- I must say you should make your record. The
6 only thing I will bring up, and this was brought up in a
7 statement of Mr. Capanegro by the probation officer and I
8 would like to lay it to rest:

9 My findings of fact were on the situations
10 where I found that the description of the statements of
11 services was false. In most cases I said that. However,
12 I think that it is perfectly plain this is not a civil suit
13 for fraud in a sense that somebody has to show reliance.
14 It, to me, is totally beside the point, whether Ricky
15 Carnivale, the president of the union, or Mr. Fitzgerald
16 relied on it or not.

17 If indeed, and I say "if" because this is
18 not charged, but let us suppose hypothetically that
19 Mr. Capanegro conspired with Carnivale to take these funds.
20 Why Carnivale would have relied wouldn't make a defense.
21 I don't think there is any need to rehash all of that, so
22 the motions are denied. Let's proceed with the sentence.

23 Now that you have had a chance to read
24 Mr. Cohn's letter, Mr. Buchwald, do you have anything to
25 say in addition to what you presented?

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2 MR. BUCHWALD: Just one matter in clarifica-
3 tion.

4 Your Honor did indicate -- in response to your
5 Honor's request our office had submitted a letter of
6 September 16, 1977 and I think that that sets forth our
7 position. One matter raised in Mr. Cohn's letter pertains
8 to the incident involving Mr. Capanegro's appearance at
9 his secretary's home the night before his secretary was to
10 testify in the grand jury. There was some testimony per-
11 taining to that at trial.

12 There was an inquiry by your Honor, as Mr. Cohn
13 points out, during summations as to why the secretary had
14 not appeared at the trial. I indicated one reason on the
15 record and indicated that there was another reason which I
16 thought it would be most appropriate to bring up after your
17 Honor's verdict rather than before.

18 I was in communication with Miss Kisarewski
19 throughout the trial. She indicated to me that if we felt
20 it at all possible not to have to call her she would appre-
21 ciate that. She felt it would add salt to the wounds. She
22 did not feel she wanted to testify to what she knew to be
23 the truth.

24 THE COURT: I thought at the time all the
25 evidence was in, I believe, the facts about the transactions

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2 between Mr. Capanegro and the secretary were presented to
3 the Court to the satisfaction of both parties. I don't know
4 of anybody who wanted to present anything more. I was
5 satisfied. I understood what I needed to understand about
6 that and I have no criticism of anybody for not calling any
7 witness.

8 MR. BUCHWALD: Mr. Cohn indicated during the
9 course of summation and again in the letter what he thought
10 was an unusual procedure in the government requesting an
11 adjournment based on the need, the potential need to call
12 Miss Kisarewski. The only thing I would ask, so the record
13 might be complete on that in case a point is raised on
14 appeal, is that Miss Kisarewski's grand jury testimony be
15 made a part of the record, and I would proffer that as an
16 exhibit to have it included in the record.

17 THE COURT: The record is perfectly clear.
18 As a matter of discretion --it is not going to be reversible
19 error because we granted an adjournment. I don't think
20 you can supplement the record at this point.

21 Mr. Cohn.

22 MR. COHN: I'll be very brief.

23 Your Honor has received Mr. Fiske's letter
24 and my letter. I know your Honor heard the testimony at
25 the trial. Your Honor heard the character witnesses at

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2 the trial, Mr. Breslin, the various justices who testified.
3 Your Honor, I'm sure, has received letters from the community
4 in connection with this.

5 I agree with your Honor on the secretary thing.
6 Not having called her and not having her testimony, I just
7 think it is a little bit beyond the pale to ask your Honor
8 in passing sentence to consider an incident involving the
9 secretary when the secretary was not called in to testify.
10 I don't think that is the kind of thing that a Court should
11 be asked to do at so solemn and important a time as this.
12 If they wanted to make those facts known here they could
13 have called the secretary.

14 I'm not saying they should have called her
15 for the purposes of this case. I'm saying having decided
16 not to call her now, having spread this on a letter, it is
17 not right.

18 Here we have a lawyer who has been practicing
19 for 21 years. He has had service in the State Legislature
20 and has been extremely active at no compensation in community
21 affairs such as the Corona Heights project, which Mr. Breslin
22 testified about. He has an unblemished record. There have
23 been the most disastrous consequences flowing from your
24 Honor's decision in this case, something which is now six
25 years old, and something for which he will be punished as

much as any lawyer or human being can be punished.

Your Honor is aware of Mr. Capanegro's mother's situation.

How the interests of justice from the standpoint of deterrence and rehabilitation and from the standpoint of anything else in this world is going to be satisfied by piling on top of this some type of incarceration, I don't know of, and that is why I said in the letter sent to your Honor that I believe under these circumstances it would be almost cruel and unnecessary to do so.

I think your Honor knows this man had never been in a court before in this posture and is never going to be here again. He has gone through the pains of hell during this trial and during these months. His practice is almost nonexistent as a result of the publicity received and if ever there has already been punishment, deterrence and every other fact the law could have looked for or applied for it is in this case.

I'm not addressing myself to a fine, no. I know that your Honor has broad discretion in that regard and Mr. Fiske has made a point concerning a fine, but insofar as asking your Honor not to incarcerate in this case -- I think that is not called for by the facts. I just rest this all on what I know is your Honor's fairness in something

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2 like that.

3 THE COURT: Mr. Capanegro, do you have anything
4 to say, any statement you wish to make?

5 THE DEFENDANT: No, your Honor. My attorney
6 has said it as eloquently as possible.

7 THE COURT: Since I delivered an opinion and
8 there was a fairly lengthy trial in the case, there was
9 much discussion of the issues at the time, I don't intend
10 to make any long statement nor do I intend to give any
11 lectures on morality, and everybody has had their say pre-
12 viously. There is very little that needs to be done in
13 addition.

14 Of course, we come to the very crucial point
15 of the sentence and I would say briefly that I have considered
16 mitigating factors such as the fact that Mr. Capanegro was
17 a first offender. This is his first offense. I have con-
18 sidered the fact that there has been some passage of time,
19 a substantial passage of the time since the events. I have
20 considered the fact that he has done good works in many
21 ways in his community and with his family; that he is of
22 support and comfort to an aged mother. All of those are
23 before the Court.

24 I have considered, on the other hand, as far
25 as the offense is concerned very little in the way of miti-

gating factors and this goes back to the evidence reflecting my strong disagreement with the defense's view of what the evidence shows. I think this was a situation where a man who was in a position of trust with respect to a labor union, a position where he was responsible for presenting his bills to the union in a fair and honest and accurate fashion, and where there was an opportunity for shaving the truth if someone wanted to do it and wanted to breach a trust -- in other words, that latter is what was done.

It is not the obvious crude form of taking money. It is a much more subtle form, but that creates its own dangers.

Any defendant has an absolute right to plead not guilty and require the government to go to trial. This is never held against anybody on sentence, but Mr. Capanegro went beyond that and I am convinced that both before and during the trial Mr. Capanegro falsified and fabricated evidence. His testimony on the stand was in many substantial respects truthful and there has never, not to this day, been the slightest indication of a facing up to the reality of the situation, and that I must take into account.

Consequently I am going to impose the prison sentence of one year on each count to be served concurrently.

Now, as far as the fine is concerned, the

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2 government recommends a fine of at least \$25,000. I will
3 not impose the fine. The events occurred, as we know, some
4 years ago. There was a civil action in which there was an
5 opportunity for the plaintiffs to attempt to get restoration
6 of the funds to the labor union. For reasons which I'm not
7 going onto, and I don't know all about, that suit was
8 dropped with very little results as far as Mr. Capanegro
9 was concerned. That is not persuasive on me on this score
10 in this criminal case as far as Mr. Capanegro's guilt or
11 innocence.

12 We get to the question of a monetary fine,
13 and I go back to that. I see no point in a fine. If we
14 were to talk about his restitution, the proper form of
15 that was a civil action and they didn't pursue it. I think
16 there is sufficient and I will not add to the severe penalty
17 imposed by reason of the sentence by imposing a fine. I see
18 no good to be accomplished by it.

19 Furthermore, I do not have enough information
20 about Mr. Capanegro's cash flow situation to indicate his
21 ability to pay a very substantial fine and I'm not going to
22 delay the sentence to have further inquiries into his cash
23 flow situation.

24 The year imprisonment is a severe penalty
25 both economically and otherwise. That is sufficient.

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2 So my sentence for the above reasons is a
3 sentence of one year imprisonment on all the counts on which
4 he was found guilty, and that is Counts 1, 2, 3, 5, 6, 7,
5 8, 10, 11, 12, 15, 16, 17, 21, 22, 23 and 24 and those
6 sentences are to be served concurrently.

7 I would say finally that the year imprisonment
8 was the recommendation of the government. However, it really
9 goes without saying that the responsibility of imposing
10 sentence is on the judge. It is not delegated to the U.S.
11 Attorney's office and while I value in this case having their
12 views, I gave as much independent consideration to the
13 entire picture and to the views of Mr. Cohn and the statements
14 of Mr. Capanegro, etc. So that this is my judgment, not in
15 any way relying on the U.S. Attorney's office having
16 important responsibility. This is my judgment on the
17 sentence, of course.

18 All right.

19 MR. COHN: Would you continue bail, your Honor?
20 It is not bail. Would you continue him released on his
21 own recognizance?

22 THE COURT: You have announced a wish to
23 appeal.

24 MR. COHN: Sure, that is as sure as death and
25 taxes.

THE COURT: Do you have any objection to that?

MR. BUCHWALD: No, your Honor.

THE COURT: He is released on his own recognition.

MR. COHN: I respectfully ask you to make that a year and a day instead of a year.

THE COURT: You will have to explain that.

MR. COHN: I think the year and a day gives the Parole Board the opportunity to consider him for probation whereas a year might not. I think this might be the one request during the trial that I could get your Honor to comply with, when I ask for more time.

MR. BUCHWALD: It is my understanding that with the year and a day Mr. Capanegro would be eligible for parole after four months. With the year sentence if your Honor indicates on the record that the same parole possibility should apply, then once again the Parole Board can grant the parole in the usual time. If your Honor does not indicate it on the record, then he would only get good time for the one year.

THE COURT: Just so I know the ground rules, and I apologize for being ignorant in this: Is this statutory?

MR. BUCHWALD: It is statutory.

MR.COHN: Yes.

THE COURT: Let's look it up.

MR.COHN: Would it be possible for one of your staff to call Judge Knapp and let him know that we are just finishing up?

(Pause)

THE COURT: 18 USC4205 provides, "Whenever confined or serving a term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of" -- in this case four months -- "of such time or after serving ten years of a life sentence."

MR. BUCHWALD: Sub-section (f), if your Honor would look at that.

THE COURT: "(f) Sentence. A prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law unless the Court which imposes sentence shall at the time of sentence provide for the prisoner's release as if on parole after serving one-third of such term or terms notwithstanding the provisions of Section 4164.

MR. COHN: (f) would seem to do it.

THE COURT: Yes, I think so. I really am reluctant -- I think (f) is the way to do it and I will say

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2 to you that I believe it is just as simple as this: I agree
3 that there should be no denial of a normal opportunity for
4 parole because of a difference in a day or so, and I would
5 make it a year and a day, if that were necessary because
6 it is different if the sentence was six months or 90 days,
7 but I think the way to do it is to make the stipulation that
8 it is authorized in (f) and I will do it.

9 MR. COHN: Thank you.

10 THE COURT: Just one more thing: I do not
11 read (f) as it stipulating that the defendant shall be
12 released after one-third. It simply gives the Parole Board
13 the normal discretion. Isn't that understood?

14 MR. COHN: No question.

15 THE COURT: And you, Mr. Buchwald?

16 MR. BUCHWALD: Yes, your Honor.

17 THE COURT: With that understanding, that is
18 fine. Thank you very much.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

-vs- :

MICHAEL CAPANEGRO, :

Defendant :

-----x

76 Cr. 914

B E F O R E :

HON. THOMAS P. GRIESA,
District Judge

New York, New York
October 13, 1977--

A P P E A R A N C E S :

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THE COURT: Mr. Kulcsar, you are representing Mr. Capanegro this morning?

MR. KULCSAR: Yes, your Honor.

THE COURT: Have you received a copy of Mr. Buchwald's letter of October 3rd?

MR. KULCSAR: I believe the firm has received a copy. Mr. Buchwald has let me look at it this morning, your Honor.

THE COURT: All right.

Why don't you just summarize the position of the government for the record, Mr. Buchwald, so it is on the transcript, and your letter also.

MR. BUCHWALD: As we indicated in our letter, we believe that we initially, and I take primary responsibility for it, at the sentencing on September 27, may have confused the impact of Section 4205(f) and a provision which we have since learned which permits the Court to mandate a defendant's release at any time after one-third of service of a sentence between six months and one year.

We have therefore outlined what we believe are the possible or some of the options available to the Court in sentencing Mr. Capanegro at this time.

THE COURT: What happened -- I think the record will show this -- is that after I imposed a sentence

1 mcds

3

2 of one year, Mr. Cohn asked that the sentence be made a year
3 and a day so that Mr. Capanegro would be eligible for
4 parole after a third of the time under 4205(a), and then --
5 I don't know exactly who participated in what way in the
6 colloquy, but at some point there was a recommendation
7 that essentially the same objective could be achieved within
8 the one year sentence by the use of 4205(f). 4205(a),
9 returning to that section, provides that a defendant who is
10 serving a sentence of more than one year shall be eligible
11 for parole after a third of the time. That is basically it.

12 I guess the implication is that someone serv-
13 ing a year or less will not be eligible for parole after
14 a third of the term, unless the Court makes some special
15 provision.

16 Then we turned to 4205(f) and that is a
17 provision that deals with terms of six months to a year, and
18 the suggestion was that I could provide for eligibility of
19 parole after service of one-third of the term, and we all
20 read the section sort of on the spot at the time and I
21 asked, as I was not clear about the language, but I asked
22 counsel if they agreed that what it meant was that
23 Mr. Capanegro would be eligible for discretionary parole at
24 the end of one-third of the time. But I wanted to make sure
25 that nobody contended that the use of 4205(f) would be a

1 mcds

2 mandatory direction of release, and it was agreed by
3 Mr. Cohn and Mr. Buchwald both that the 4205(f) provision
4 meant that Mr. Capanegro would be eligible for parole, but it
5 wasn't a direction for his release and the eligibility is
6 simply meant eligibility for parole consideration.

7 I think that this is a somewhat difficult
8 section to interpret at least on the spot, so I don't think
9 anybody can be faulted for that. I think it was just an
10 understandable difficulty in interpretation which we all
11 got into.

12 But now as I understand it the government
13 recognizes that 4205(f) is not merely a discretionary
14 parole provision -- right?

15 MR. BUCHWALD: That is correct, your Honor.

16 THE COURT: So we have to do something else.

17 What is Mr. Capanegro's request in light of
18 the situation we are now in. Do you have a request?

19 MR. KULCSAR: Yes, your Honor.

20 It is our request that the defendant be
21 sentenced to concurrent terms of one year and one day and
22 that he be sentenced under Section 4205(b), which would
23 allow the Parole Board upon the defendant's incarceration
24 to make a determination at that time as to when he will
25 be eligible for parole.

1 mcds

2 THE COURT: How would you apply 4205(b)? What
3 do you want me to do under 4205(b)?

4 MR. KULCSAR: It is just a sentencing provision
5 which allows the Parole Board upon the defendant's incarceration
6 tion to consider him immediately eligible for parole and
7 for them to set a minimum period of incarceration for the
8 defendant at their discretion.

9 THE COURT: (b) says: "Upon entering a judg-
10 ment of conviction the Court has the jurisdiction to impose
11 sentence," etc., "where the term exceeds a year may designate
12 in the sentence of imprisonment imposed a minimum term.
13 At the expiration date the prisoner shall become eligible
14 for parole, which term may be less than but shall not be more
15 than one-third."

16 So you are really requesting me to make him
17 eligible for parole immediately.

18 MR. KULCSAR: Yes, sir, at the discretion of
19 the Parole Board.

20 THE COURT: Let me just tell you my thinking
21 perfectly candidly.

22 The request of Mr. Cohn took me somewhat by
23 surprise last time and that is why we are having this bit
24 of difficulty. I will state to the lawyers and to
25 Mr. Capanegro that in considering my sentence and making

1 mcds

2 this sentence a one-year concurrently for all these counts,
3 I basically felt that the one-year term was deserved, I
4 regret to say, but I felt it was deserved, obviously less
5 whatever statutory good time would be applicable because that
6 is a mandatory matter if the good time requirements are
7 met.

8 So I did not have in mind when I imposed the
9 one-year sentence four months or two months or three months.
10 Otherwise I could have very easily made a four-month or a
11 two-month or a three-month sentence.

12 Now, at the very end of the hearing when
13 Mr. Cohn made his application, it was indeed an applica-
14 tion which, to some extent, ran contrary to what my thinking
15 was, but on the spur of the moment what did go through my
16 mind was that I normally don't, even though I impose a
17 sentence of a certain number of years, I don't try in any way
18 to interfere with the normal functioning of the Parole Board,
19 and if the Parole Board considers people after a third of
20 that sentence, they may release them at that time or they
21 may not release them, but at least I don't have any inten-
22 tion of interfering with the normal function of the Parole
23 Board. They are the body that is dealing with the man on
24 the scene at the institution and I am not there at that time.

25 So, although Mr. Cohn's suggestion ran somewhat

1 mcds

2 counter to my thinking, there was this other consideration
3 of not -- what I make is a standard policy, that I recognize
4 there is parole and I recognize what I have just said, and
5 I guess I was persuaded that I consider the application of
6 Mr. Cohn thinking, well, if there was a difference of a day,
7 that would at least put the parole mechanism into effect,
8 perhaps it should be considered, and then we turned to
9 4205(f) because the 4205(f) section didn't add any gimmick
10 of adding a day to the sentence, and I don't particularly
11 like the gimmicks. So it was left in the posture that it
12 was and I think the basic way it was left is that if
13 4205(f) was a device whether there could be legitimate
14 parole consideration after a third of the time, I would per-
15 mit that.

16 Now, to the extent that I have in a sense made
17 a commitment, in substance, of that kind, I don't want to
18 go back on a commitment I've made, and I will keep that,
19 even though I'm admitting to you quite frankly that there
20 were these conflicting considerations that presented them-
21 selves to me.

22 I will, therefore, change the sentence to a
23 year and a day because I feel that I committed myself to
24 that and I will stick to that.

25 I want you to recognize, Mr. Kulcsar, that I

1 mcds

2 will not grant the application for the use of 4205(b).
3 Furthermore, it is obvious that although you will become
4 eligible for parole consideration after a third of the time,
5 Mr. Capanegro, that is up to the discretion of the Parole
6 Board. I think it is only realistic to inform you that under
7 the Parole Board guidelines the guidelines for this kind of
8 an offense, as I understand it, would in your case involve
9 incarceration from 16 to 20 months. So that it is doubtful
10 that you will be released at the end of four months, but I
11 do not want to deprive you of your shot at that chance.

12 I think for whatever it is worth to the Parole
13 Board that I will have the minutes of this hearing trans-
14 mitted to the Parole Board and made a part of their record
15 so that they understand, for better or for worse, what went
16 on in my thinking and exactly how this occurred.

17 So, the sentence is amended pursuant to the
18 application of the defendant and the sentence is a year and
19 a day for each of the counts on which I found Mr. Capanegro
20 guilty.

21 All right.

22 MR. KULCSAR: Can I make one brief request of
23 the Court?.

24 THE COURT: Yes.

25 MR. KULCSAR: Not to debate with you on it,

1 mcds

2 certainly. The only thought that comes to my mind is that
3 it is not clear from what your Honor just said in that it
4 would seem that your Honor did grant the request to sentence
5 him under 4205(b) the defendant would have a more realistic
6 chance or perhaps the only real chance for early parole and,
7 in effect, not sentencing him under that provision as a
8 practical matter he will, from what your Honor indicates,
9 serve a full year and certainly the sentence is at the least
10 a sentence of four months to a year and a half.

11 THE COURT: What do you mean, a year and a
12 half?

13 MR. KULCSAR: Excuse me, a year and a day.
14 Excuse me, your Honor.

15 THE COURT: The most I could do under 4205(b)
16 is to provide that he would be eligible for parole considera-
17 tion earlier than a third of the time.

18 MR. KULCSAR: Yes, sir.

19 THE COURT: I don't believe it is desirable
20 to go that far here. I don't think I made any commitment
21 at the last sentence under any construction to go that far
22 and I won't do it. That is my decision.

23 MR. KULCSAR: I certainly didn't mean to imply
24 nor was I told by Mr. Cohn or Mr. Rosen that you did imply
25 that you would do that.

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Mr. Capanegro has asked me to bring to your Honor's attention, as I'm sure you Honor is already aware, that he is in fact the sole support of an elderly mother who lives with him who is, in fact, an invalid and that that might be consideration in your Honor granting a request that has been made of you.

THE COURT: I was very, very much aware of that at the time of sentencing, and that was one of the considerations which I took into account in the sentence that I imposed.

I think as a matter of formality I'm required to make a statement which I may have omitted and that is that Mr. Capanegro has the right to appeal and that he has the right to a counsel on appeal, and if he cannot afford his own counsel, one will be appointed for him to handle that appeal.

All right, that concludes our hearing.

MR. KULCSAR: Thank you.

* * * *

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MICHAEL J. CAPANEGRIO
ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

October 14, 1971

HICKORY S-4080
4081
4058

Communication Workers of America
Local 1101
224 West 49th Street
New York, N.Y.

Att: MR. RICKY CARNIVALE, Pres.

FOR PROFESSIONAL SERVICES RENDERED IN RE:

MOSES LORENZO and JOHN WOODFORD

As and for all negotiations and conferences; appearances
at Police Station; three appearances in Court; Preparation
for trial and appearances on trial dates for
Criminal charges in re JOHN WOODFORD:

\$ 1000.00

As and for all negotiations and conferences; appearances
at police station; 3 appearances in Court;
Preparation for trial and appearances on trial
dates for two separate criminal charges in re
MOSES LORENZO:

2000.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:

JOSE A CINTRON: JOHN MULLALLOY, RICHARD ORBAN;
VICTOR BERNARD and KEVIN LYONS

For all negotiations, conferences and appearances in
Court; Preparation of trial; Trial defending all
criminal charges for all of the above named persons;
dismissal and acquittal of all charges as to the
above named persons:

4750.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:
CARMINE GALLO

Negotiations, conferences and appearances in Court;
Preparation of Trial; Trial of Action (Felony & Misdemeanor)

3000.00

FOR PROFESSIONAL SERVICES RENDERE IN RE: Lonnie Goodman

Negotiations, conferences & appearances in Court;
Preparation of Trial; Trial of Action (Felony & Misdemeanor)

3000.00

Total Due: \$13,750.00

PAID 10-21-71 \$5,000
#18872 - \$1,000
#18873 - \$5,000
#20435 - \$5,000
#23049 - \$,750
Nov. 23, 1971
Dec. 9, 1971

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MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

December 10, 1971

Communication Workers of America
Local 1101
224 West 49th Street
New York, N.Y.

Att: Mr. Ricky Carnivale, Pres.

FOR PROFESSIONAL SERVICES RENDERED IN RE:
Dewey Hummel

As and for all negotiations and conferences;
appearances at Police Station; appearances in
Court; Preparation for Trial and appearances on
Trial Dates for Criminal Charges:

\$ 1,450.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:
JOHN BYRD

As and for all negotiations and conferences;
appearances at Police Station; appearances
in Court; Preparation for trial and appearances
on Trial dates for Criminal charges in re the
above named:

1,300.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:
Kenneth Lapidis

As and for all negotiations and conferences;
appearances at Police Station; appearances in
Court; Preparation for Trial and appearances
on Trial Dates for Criminal Charges in re
the above:

1,650.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:
MICHAEL ROSSO

As and for all negotiations and conferences;
appearances at Police Station; appearances in
Court; preparation for trial and appearances
on Trial Dates for Criminal charges in Riverhead:

1,850.00

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MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

December 10, 1971

Communication Workers of America
Page Two

FOR PROFESSIONAL SERVICES RENDERED IN RE:

Ross Gilbert

As and for all negotiations and conferences;
appearances at Police Station; appearances in
Court; preparation for Trial and appearances
on Trial dates for Criminal charges in re the
above named.

\$ 1,500.00

TOTAL DUE:

\$ 7,750.00

Paid

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paid 12/16/71
24586

HICKORY 5-4080
4081
4058

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

December 16, 1971

Communication Workers of America
Local 1101
224 West 49th Street
New York, N.Y.

Att: Mr. Ricky Carnivale, Pres.

FOR PROFESSIONAL SERVICES RENDERED IN RE:

LLOYD HAROLD AND FRANK CARLO

As and for all negotiations and conferences;
appearances in Court; Preparation for
Trial and appearances on trial dates for
Criminal Charges in re LLOYD HAROLD:

\$ 1300.00

As and for all negotiations and conferences;
appearances in Court; Preparation for
Trial and appearances on Trial dates for
Criminal Charges in re FRANK CARLO:

1300.00

Total Due

\$ 2600.00

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MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

January 7, 1972

COMMUNICATION WORKERS OF AMERICA
Local 1101
224 West 49th Street
New York, N.Y.

Att: Ricky Carnivale, Pres.

FOR PROFESSIONAL SERVICES RENDERED IN RE:

Frank Richard

As and for all negotiations and conferences; appearances in Court; preparation for trial; appearances on trial dates for Criminal charges for three criminal charges, misdemeanors;

Paid 1-26-72
\$3,600.00
#52352

FOR PROFESSIONAL SERVICES RENDERED IN RE:

RALPH TRAUVERT

AS and for all negotiations and conferences; appearances in Court; preparation for trial; appearances on trial dates for Felony Criminal Charges:

Paid 1-26-72
3,000.00
#52353

FOR PROFESSIONAL SERVICES RENDERED IN RE:

MARTIN I. GOLDBERG

As and for all negotiations and conferences; appearances in Court; preparation for trial; appearances on trial dates for Felony Criminal Charges:

Paid 1-26-72
3,000.00
#52354

FOR PROFESSIONAL SERVICES RENDERED IN RE:

ANTHONY JANCOVICZ

AS AND FOR all negotiations and conferences; appearances in Court; preparation for trial; appearances on trial dates for Criminal Charges:

Paid 1-26-72
1,300.00
#52355

For Professional Services rendered in re:

MICHAEL MARKSON

AS and for all negotiations and conferences, appearances in Court; preparation for trial; appearance on trial dates for Criminal charges:

Paid 1-26-72
1,300.00
#52356

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

January 7, 1972

COMMUNICATION WORKERS OF AMERICA
Local 1101

Page Two

FOR PROFESSIONAL SERVICES RENDERED IN RE:

JOHN HAND

AS and for all negotiations and conferences; appearances
in Court; preparation for trial; appearance on trial
dates for Criminal Charges:

Paid 1-26-72
1,300.00
#52348.

FOR PROFESSIONAL SERVICES RENDERED IN:

MARTIN ZUKERMAN

As and for all negotiations and conferences; appearances
in Court; Preparation for trial; Trial briefs; appearances
on Trial dates and adjourned dates:

Paid - 1-26-72
1,375.00
#52349

FOR PROFESSIONAL SERVICES RENDERED IN RE:

AS AND FOR negotiations, conferences and advice in regard
to Criminal Charges by Nick Fittipaldi, ROBERT AST,
and DENNIS LINCOLN in re Telephone Company

Paid 1-26-72
1,000.00
#52350

AS AND FOR PROFESSIONAL SERVICES RENDERED IN RE:

all conferences, negotiations and appearances at
hearing; appearance at arraignment for charges
involving Paul Radloff, felonious assault charges;
advice and legal briefs in regard thereto:

Paid 1-26-72
1,075.00
#52351

FOR PROFESSIONAL SERVICES RENDERED IN RE:

As and for all negotiations, conferences;
appearances at Court; preparation for Trial; Trial briefs;
appearance at hearing on hearing dates in re criminal
charges against Telephone Company: (out-of-Town foreman hearing.)

Paid 1-26-72
3,500.00

TOTAL DUE:
paid in full
1-26-72.

20,450.00
#52357

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RECEIVED

HICKORY 5-4380
4381
4358

JAN 17 1972

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

BY LOCAL 1101
136-51 37th Avenue
Flushing, N. Y. 11354

January 13, 1972

Communication Workers of America
Local L101
224 West 49th Street
New York, N.Y.

Att: Mr. Ricky Carnivale, Pres.

FOR PROFESSIONAL SERVICES RENDERED IN RE:

HAL DOLGIN

As and for all negotiations, conferences, appearances
in Court in regard to criminal Charges in the
above; appearance in Court and attendance at trial:

\$ 1,075.00

Paid 2-11-72
#56016

FOR PROFESSIONAL SERVICES RENDERED IN RE:

As and for all negotiations, conferences, advice,
appearances in Court in regard to Criminal Charges
with DUNCAN HEVENOR :

1,000.00

Paid 2-11-72
#56015

FOR PROFESSIONAL SERVICES RENDERED IN RE:

GIOSE FRANCO

As and for all negotiations, conferences, advice
appearances in Court in regard to Criminal
charges with Giose Franco :

750.00

Paid 2-11-72
#56013

FOR PROFESSIONAL SERVICES RENDERED IN RE:

LAWRENCE JOHNSON

As and for all negotiations, conferences;
appearances at hearing: appearances for plea
and arraignment; appearances at trial; trial
of case on two misdemeanors:

2,500.00

Paid 2-11-72
#56012

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MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

Communication Workers of America
Local 1101

January 13, 1972

- PAGE TWO -

FOR PROFESSIONAL SERVICES RENDERED IN RE:

ROBERT ZAPPULLA

As and for all negotiations, conferences
in regard thereto; arrest for misdemeanor;
Dismissal of same:

Paid 2-11-72
#52011
\$ 500.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:

ERIC COBB

As and for all negotiations, conferences,
appearances in Court; appearances on
adjourned dates; appearances on trial; inter-
viewing of witnesses; preparation for trial for
three misdemeanors: inciting a riot; criminal
mischief; disorderly conduct;

Paid 2-11-72
#52010
3,700.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:

JOHN MOONEY

As and for all negotiations, conferences,
appearances in Court; appearances on adjourned
dates; appearances on trial; interviewing
of witnesses; preparation for trial for three
misdemeanors: inciting a riot; criminal mischief;
disorderly conduct:

Paid 2-11-72
#56009
3,650.00

FOR PROFESSIONAL SERVICES RENDERED IN RE:

BRUCE WHYTE

As and for all negotiations, conferences;
appearance for the above in Night Court; appearances
in Court and adjourned dates; appearances on
trial; interviewing of witnesses; preparation for
trial for three misdemeanors; inciting a riot; criminal
mischief; disorderly conduct:

Paid 2-11-72
#56008
3,900.00 ✓

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

Communication Workers of America
Local 1101

January 14, 1972.

- PAGE THREE -

FOR PROFESSIONAL SERVICES RENDERED IN RE:

JOHN HYLAND

As and for all negotiations, conferences and
advice in regard to Criminal Charges involving
JOHN HYLAND; appearances at hearing dates;
Appearances at trial and adjourned dates:

TOTAL DUE:

Red 2-11-72
#56007
950.00
\$ 18,025.00

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HICKORY 5-4080
4081
4058

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354
January 31, 1972

Communication Workers of America
Local 1101
224 West 49th Street
New York, N.Y.

Att: Ricky Carnivale, President

FOR PROFESSIONAL SERVICES RENDERED IN RE:
BRUCE WHYTE

Balance remaining for defense of two felonies; picking a jury; trying case; attendance at trial; preparation of trial briefs:

Paid
2-24-72
\$3,500.00
#59772

FOR PROFESSIONAL SERVICES RENDERED IN RE:
JACOB ADLER

As and for all negotiations, conferences appearances in Court; preparation for Trial; appearances on Trial Dates; and adjourned dates:

Paid
2-24-72
1,325.00
#59773

FOR PROFESSIONAL SERVICES RENDERED IN RE:
JOHN TOOMEY

As and for all negotiations, conferences, appearances in Court; preparation for trial on four Criminal Charges (misdemeanors) to wit: Criminal Possession of stolen property; Criminal tampering; Criminal Mischief and Larceny; appearances on Trial dates and adjourned dates; trial of case:

Paid
2-24-72
5,400.00
#59774

FOR PROFESSIONAL SERVICES RENDERED IN RE:
JOSEPH CASSIDY

As and for all negotiations conferences, appearances in Court; preparation for Trial; appearance on trial dates and adjourned dates; trial of case:

Paid
2-24-72
1,375.00
#59775

FOR PROFESSIONAL SERVICES RENDERED IN RE:
DOUGLAS ROPER

As and for all negotiations conferences, appearances in Court; preparation for Trial for Criminal Charges of two misdemeanors; appearance on Trial dates and adjourned dates:

Paid
2-24-72
2,750.00
#59776

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

January 31, 1972

Communication Workers of America
PAGE TWO

FOR PROFESSIONAL SERVICES RENDERED IN RE:

Anthony Fasano

As and for all negotiations, conferences,
appearances in Court; preparation for Trial;
appearances on Trial dates and adjourned dates;
trial of case:

Paid
2-24-72
\$ 1,675.00
#59777

FOR PROFESSIONAL SERVICES RENDERED IN RE:

Anthony Califra

As and for all negotiations, conferences,
appearances in Court; preparation for Trial;
appearances on Trial dates and adjourned dates;
trial of case:

Paid
2-24-72
1,550.00
#59778

FOR PROFESSIONAL SERVICES RENDERED IN RE:

Richard Halvey

As and for all negotiations, conferences,
appearances in Court, preparation for Trial;
appearances on Trial Dates and adjourned
dates; trial of case:

Paid
2-24-72
1,575.00
#59779

FOR PROFESSIONAL SERVICES RENDERED:

Michael Block

As and for all negotiations, conferences,
appearances in Court; preparation for trial;
appearances on Trial dates and adjourned
dates; trial of case: (Criminal Mischief, 1st degree:

Paid
2-24-72
1,725.00
#59780

FOR PROFESSIONAL SERVICES RENDERED IN RE:

ROBERT NERI

As and for all negotiations conferences, advice,
appearances in Court in regard to Criminal
charges; preparation of trial; appearances on Trial
dates and adjourned dates; dismissal of same;

Paid
2-24-72
1,850.00
#59781

FOR PROFESSIONAL SERVICES RENDERED IN RE

THEODORE WALLIN

As and for all negotiations, conferences; prepar-
ation for trial; appearances on trial dates; &

Paid
2-24-72
2,000.00

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MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

COMMUNICATION WORKERS OF AMERICA
PAGE THREE

January 31, 1972

FOR PROFESSIONAL SERVICES RENDERED IN RE:

STEVEN DZUDAY

As and for all negotiations, conferences;
advice; appearances in Court in regard to
Criminal charges; preparation of Trial;
appearances on Trial dates;
and adjourned dates; dismissal of same:

FOR PROFESSIONAL SERVICES RENDERED IN RE:

Nick Fittipaldi

As and for all negotiations, conferences,
appearances in Court; preparation for Trial;
appearances on Trial dates and adjourned
dates; dismissal of same:

TOTAL AMOUNT DUE

Paid
2-24-72
\$ 1,850.00
#59783

Paid
2-24-72
1,450.00
#59784

28,025.00

A99

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MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

February 17, 1972

Communication Workers of America
Local 1101
224 West 49th Street
New York, N.Y.

Att: Mr. Ricky Carnivale, Pres.

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PETER O'NEAL

As and for all negotiations, conferences,
appearances in Court, preparation for trial
appearances on adjourned dates; trial of case:

Paid 2-29-72
\$1,450.00
#63397

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. ROBERT POMPOSELLO

As and for all negotiations, conferences,
appearances in Court; appearances on
adjourned dates; preparation for trial;
Conferences with witnesses for trial of case:
(Assault in the 3rd degree)

Paid 2-29-72
1,850.00
#63398

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. DOUGLAS ROPER

As and for all negotiations, conferences,
appearances in Court; preparation for trial for
Criminal Charges; preparing trial with conferences
with witnesses; appearance on trial dates; Trial
of action:

Paid 2-29-72
2,400.00
#63399

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. WALTER JASZCZUK

As and for all negotiations, conferences,
counselling, and advice in regard to
pending charges which may be lodged
against him:

Paid 2-29-72
250.00
#63400

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

February 17, 1972

-2-

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. MICHAEL HERLY

As and for all negotiations, conferences,
appearances in Court, preparation for
trial; conferences w. witnesses; appearance
at trial dates and adjourned dates; trial of
the case: (Felony and Misdemeanor)

FOR PROFESSIONAL SERVICE RENDERED IN RE:
PEOPLE V. WARREN PEZ

As and for all negotiations, conferences,
advice, appearances in Court in regard
to Criminal charges:

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. MICHAEL ANTONUCCI

As and for all negotiations, conferences,
advice, appearances in Court in regard
to Criminal Charges:

FOR PROFESSIONAL SERVICES RENDERED IN RE:
PEOPLE V. EION COLLIS

As and for all negotiations, Conferences,
appearances in Court; preparation for
trial; Conferences with witnesses and with
client; appearances on trial dates and
adjourned dates; trial of case:

FOR PROFESSIONAL SERVICES RENDERED IN RE:
JACK RUSSEK

As and for Conferences, Negotiations and
Appearances at Hearing, Appearance at
arraignment for charges involving Jack
Russek; legal advice in regard thereto

Paid 2-29-72

\$4,500.00

#63401

Paid 2-29-72

750.00

#63402

Paid 2-29-72

875.00

#63403

Paid 2-29-72

1,575.00

#63404

Paid 2-29-72

675.00

#63405

MICHAEL J. CAPANEGRO

ATTORNEY AT LAW

136-51 37th Avenue
Flushing, N. Y. 11354

-3-

February 17, 1972

Communication Workers of America
Local 1101

· FOR PROFESSIONAL SERVICES RENDERED IN RE:
JOSEPH McALEER

As and for all negotiations, conferences,
appearances in Court; preparation for
trial; conference with witnesses and
with client; appearances on trial dates
and adjourned dates; trial of the case;
(Felony and Misdemeanor)

Paid 2-29-72
\$4,500.00

TOTAL DUE:

\$18,825.00

63406



COMMUNICATIONS WORKERS OF AMERICA, A.F.L.-C.I.O.
224 WEST 49TH STREET, NEW YORK, N.Y. 10019

TEL. 581-1500 TAPE 881-1511

May 1, 1971

Michael J. Capanegro
136-51 37th Ave.
Flushing, NY 11354

Dear Mr. Capanegro;

As President of Local 1101, I wish to inform you that I am retaining your services as attorney for the membership of the local. Your knowledge and capabilities will be used in all legal matters concerning this Local and its membership.

Very truly yours,

Ricky Carnivale
Ricky Carnivale, President

RC;ps

USA 336-475
(ED. 4-23-71)

Government
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

12

[Signature]

122-1
MAY 1 - 1971
U. S. GRAND JURY
S. D. N. Y.

THIS AGREEMENT made this ¹⁰ day of June, 1971 by and between COMMUNICATION WORKERS OF AMERICA, Local 1101, having its principal place of business at 224 West 49th Street, New York, New York, hereinafter call the "CLIENT", and MICHAEL J. CAPANEGRO, an attorney-at-law with offices at No. 136-51 37th Avenue, Flushing, New York, hereinafter called the "attorney",

W I T N E S S E T H

That in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. The client does hereby employ and retain the attorney as its attorney for and during a period commencing on the 1st day of ~~May~~ ^{APRIL}, 1971 and shall continue for as long as Ricky Carnivale, President, shall remain in office.

2. The attorney accepts such employment and retainer and agrees to render and perform all legal services necessary or proper for the protection of the interests and the property of the client whenever and to the extent required by such client and in the transaction of the business of the client, hereby agreeing to represent the client in any and all actions, suits or proceedings in all courts of the State of New York to which it may now or hereafter be a party; to institute and bring in the Courts of the State of New York of competent jurisdiction any actions, suits or proceedings necessary and proper for the protection of the interests or property of the client or necessary or proper in the ordinary conduct or transaction of its business; to examine and report upon

all titles to real property, and hereafter obtain or desire to obtain an interest; to prepare any and all contracts, instruments and documents necessary and proper in connection with the business of the client; to enforce and collect to the best of his ability any and all claims, demands or causes of action which may be turned over to him for enforcement or collection by the client and, in general, to render all and single such legal services of every kind and nature as the client shall require and deem proper in its business.

3. The Client shall pay to the Attorney as compensation for the services to be performed by him, as hereinbefore set forth, the sum of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS per year payable in equal quarterly installments in advance on the 1st day of every third month commencing April 1, 1971.

4. That the attorney shall pay for all of the reasonable and necessary expenses incurred in any legal matters which he is handling for the Client and said expenses are inclusive in his yearly payment, i.e.: auto, garage, parking, bridge tolls, etc. when counselling at place of business of client.

5. That all cases, legal matters, claims, defenses of law suits of the client which were to be handled by other attorneys prior to April 1, 1971, shall continue in these law firms and fees will be adjusted with said attorneys.

6. That this contract may be terminated by either party by sending a certified letter to this effect giving two weeks notice.

A.104

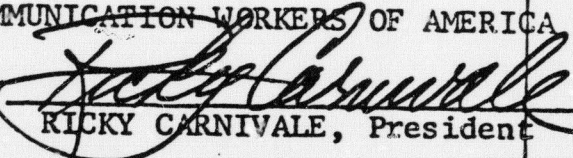
7. That the client does hereby authorize and empower the attorney to obtain such counsel as he may deem essential to the proper prosecution or defense of any legal action or matter; such counselling, however, to be paid by said attorney out of the compensation to be paid to him as herein provided.

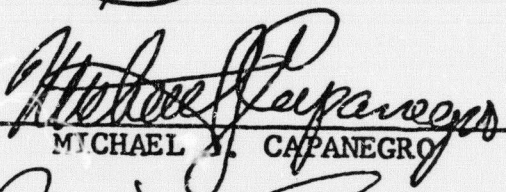
9. That payment to the attorney as herein above provided, does not include personal representation of any of the Union Officers or members in any personal matters not related to union business.

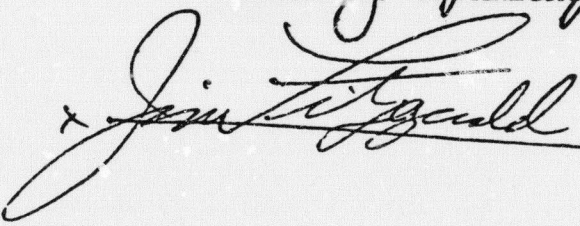
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

COMMUNICATION WORKERS OF AMERICA

By


RICKY CARNIVALE, President


MICHAEL A. CAPANEGRO



Michael J. Capanegro
ATTORNEY AT LAW

73-10545
73-3366
136-17 41st Avenue, Flushing, N.Y. 11354
213-42-1801

March 31, 1975

Donald Buchwald, U.S. Attorney
Federal Court Building
Foley Square
New York, New York

Dear Mr. Buchwald:

I am enclosing a statement which should answer most of your questions with reference to the inquiry which you are making regarding me, Mr. Carnivale and CWA, Local 1101.

I have attached various documents and papers showing my tax audit and settlement of same for 1972. If you wish to see 1973, please contact my attorneys Mike Rosen or Roy Cohn in Manhattan at 472-1400.

The other statements of the two secretaries show the set-up in the Union during the strike and the method of paying bills as shown therein.

Very truly yours,

Michael J. Capanegro
MICHAEL J. CAPANEGRO

MJC:ea

Enclosures

A.106

elimination, I have finally come to the conclusion that the only discrepancy you could be looking for is "unauthorized use of funds". This charge never entered my mind due to the fact that there was overwhelming evidence that there was authority to pay me from the Union Funds.

Mr. Carnivale and I were in Federal Civil Court before Judge Jacob with the attorney for the CWA, 1101. He, ridiculously, seems to be under the impression that there was no authority for Mr. Carnivale to write these checks to pay my legal fees. Just on an argumentative bases, the Union says with reference to the Civil case that the \$609,000.00 which they claim was not spent through proper channels, is the sole responsibility of Mr. Carnivale.

THAT'S
SAY → No one else in the Union had this great authority to spend this money except him and him alone. He is responsible for everything. If this is so, can anyone now be heard to say that he did not have the authority besides spending the \$609,000.00 that he also had the authority to pay my legal fees. But this is argumentative, I would not write this letter on that basis alone.

Remember, that I informed you that there was a meeting of approximately 6,000 members at the Felt Forum at Madison Square Garden; and at that meeting in 1971 sometime after the strike of July 1971, the Union members met and unanimously endorsed the resolution that "the CWA Local 1101 shall be responsible for the payment of legal fees of members involved in criminal charges during the strike". The resolution may not be in those exact words but it is the basic thrust and statement of the individuals who proposed it and the resolution that was passed unanimously. You must, (Mr. Carnivale spoke against the resolution) remember that the CWA members control absolutely

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A.10

Page 2 cont'd.

everything in the Union and can do everything or anything they want with the Union and its funds within the legal bounds of its by-laws. In other words, the Union members by amending by-laws, could get up and in a mass meeting, cut off the salaries of all of the officers, if they so desired. So that the Union general meeting is a mandate to the Board of Governors and officers. This is the law as stated in the by-laws presently in existence. Therefore, when that resolution was passed by the general membership, Mr. Carnivale and the Board of Governors, under no circumstances, at any time, could go against that mandate to pay the legal fees of the members during the strike, involved in criminal charges. If the Board of Governors had met in a duly called meeting and resolved that they would not pay these legal fees of members Mr. Carnivale and the officers would be violating the rules of the Union if they went along with that resolution. So what is the overall effect of this resolution and the present matter? The effect is that each Union member became a potential client in and by himself. There was no person to go to. He only had to be picked up during the strike on a criminal charge and he could call his own attorney, go to court and the attorneys bill would be paid by the Union. What happened, is that when the Union members got picked up the Union recommended me as the attorney and most of them chose me as their lawyer. Many of them did not. They retained their own counsel. One of the very executive offices, Mr. Joseph MacAleer, who I believe, is stating that there was no authority for Mr. Carnivale to pay the legal fees of the Union members, himself retained me to represent him. At a certain time, he did not want my services any longer, he then retained the firm of Friedman & Friedman. This firm, I am informed, upon information and belief, were then paid their legal fees by no other body than the Union CWA Local 1101 who now claims that Mr. Carnivale could not pay my legal fees.

Further absolute proof that there was authority to pay these legal fees is that the firm of Schwartz & O'Donnell, who was the attorney for Local 1101 before the Carnivale administration took over in 1971, retained a firm of

Page 3 cont'd.

attorneys. Kaming & Cunningham to represent some 20 or 30 strikers picked up in a previous strike in 1970. This same firm of Schwartz & O'Donnell is now advising the present Union officers in this matter and is their attorney in the Civil matter against Carnivale and me for \$609,000.00. How could Schwartz & O'Donnell, if they say there was no authority to pay these legal fees, possibly have retained the firm of Kaming & Cunningham to defend the persons picked up in the strike of 1970. And, upon information and belief, I am informed that there never was a general meeting in that instance which would give authority to the Board of Governors to pay legal fees of members picked up during the strike for criminal charges. So, we now have the firm of Schwartz & O'Donnell representing the Union members who are saying there was no authority to pay any legal fees, when in the exact very concise situation Schwartz & O'Donnell retained other counsel to defend the criminal charges of members in 1970. You know, I showed you that Retainer Agreement which carried out the previous negotiations between Schwartz & O'Donnell and Kaming & Cunningham. I do not know if Schwartz & O'Donnell received any forwarding fees from Kaming & Cunningham or if they shared in any of the fees for those members. I am not saying that there was anything wrong in it, I am saying that these very people are saying that there was no authority to pay my legal fees. Why wasn't there? I had a general membership meeting where the members mandated that legal fees be paid, and only authorized officers sign the checks.

Can the firm of Schwartz & O'Donnell and Mr. Mac Aleer now be heard to say when they directed payment from the Union either directly or indirectly or caused funds to be paid to lawyers on their behalf for criminal charges, now be heard to say that their fees were legal, authorized and proper and mine were not, because there was no authority. I submit to you Mr. Buchwald, that no more need be said in regard to this matter of authority.

Page 4

The authority is complete and you should forthwith dismiss this matter. If there is a challenge as to the amount of the fees, it should be left to a Civil Court and it will be resolved therein. As far as the responsibility of signing the checks go and who was authorized to do it, there are two statements by two young ladies who served in the office and were there everyday as secretaries with the defense fund directors who were all employed at the same time and say and were part of the entire operation. Their statements are marked "affidavits" although they are not, but these women have made these statements and come forth and showed exactly what occurred and how the checks were made out. The instances wherein Mr. Carnivale wrote the check to me personally, was merely one of convenience as I was in there almost daily in his office and as time would pass at the end of a weary day, I would say, "Rickie, do you have a check for me, I am doing alot of work in these legal matters" and he would say, "O.K." and he would call Mr. Fitzgerald, ask him to write up the check or get him a check in many instances and would then write the check right out there as I sat in front of him. He would then pull out all of my current bills and add them up and, in some instances, would only pay a couple of them and tell me that I would have to wait a week or two or a month for more payment. That was the entire truth of the matter as to how my bills were paid. In some instances, I received checks in the mail on the bills, as I would call up the secretary and ask for a check and it would come in the mail. That this method of paying bills was the same as any other local expense bill as in rent, printing, repairs of office equipment and supplies and all of the many expenses that were daily occurrence in the Local. A bill would be pulled out, it would be looked at, if it was due and owing, it would be paid. And that is what happened with me. The only difference being was that in many instances, I was present and I would request it personally from Mr. Carnivale and he would then write me a check. Only because of the fact that I was there daily and working on Union business and consultations. I would venture to guess that if any of the suppliers of Local

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1101 would happen to have been present at the time and were there for some reason on a daily basis that they would come in and request a check for supplies rendered and the same situation could have easily occurred with any supplier of office supplies.

I submit to you that very few businessmen of any nature ever go behind their lawyer's bill and question it. I would submit to you that Mr. Dempsey, the President of Local 1101, if he were put on the stand and asked whether he went behind every legal bill or other bills, and asked how many hours did you spend on this case, where did you go, what lawyers worked on it, how many times were you in Court, and so on, that these questions would be answered in the negative. I am a respected member of the Bar and when I submitted my bills to Mr. Carnivale, he looked at them and assumed that they were right and proper. The fact that some of the retainers on the cases were for cases that came in which did not come to full fruition in a full scale trial; was after the fact, and did not taint my activities with reference to the bills. As stated, I paid all expenses and portions of my legal fees to other attorneys who worked on the criminal cases with me. I again state to you as I did in your office that when the situation of legal fees was challenged, I immediately said to Mr. Bittman and Mr. James Fitzgerald, "Lets sit down, if there is any overcharge, I will adjust", and their answer was, as carried from their superiors in the Union, "No, we are going to get you and Carnivale and we are going to smear your name in the newspapers. Get Rickie Carnivale to withdraw from the race". Mr. Bittman and Mr. Fitzgerald acted very honorably in all of our negotiations and told the truth and told it like it was, as told to them by their superiors.

Another important consideration-If I am to be critized for cases which did not develop fully, will you credit me with additional fees for those matters wherein I billed less than I should have received-Isn't it a two way street? Since this matter has come up I have consulted numerous attorneys in the criminal field and my bills were in many felony cases very low. So

A. 111

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if you look at the overall picture, I am actually behind financially. In the Civil action against me I am preparing a substantial Civil claim for increase of fees for unjust enrichment by the Union

So my conclusion is; if my fees are reasonable for legal work I did, and very low in some instances; and if Carnivale and Fitzgerald had the authority to write the checks (which they had to under the membership mandate and the proper procedures were followed; and there is no evidence of any illegality with reference to any monies taken from the Union; and Carnivale never knew beforehand who, how, when or where a client came from or when or what the amount of a bill was to be rendered; and my secretary prepared all retainer bills in most instances when the client called; and phrased the bills on the work to be done; and it is custom that there is a fee due and owing merely for opening a file and advising a client; and the motivation of the present Union officers who charged Carnivale and me with stealing \$609,000. as stated in the newspapers during the height of an Election of the "Accuser" forces against the Carnivale forces; then all of the above should as an overall picture give your office sound and justifiable basis to place these improperly motivated and falacious charges in their proper perspective and dismiss same.

A.112

SECRET

I, Robert Irvine, an employee of Local 1101 do hereby swear and attest that the following statements are true and factual:

- a. that while Mr. Ricky Carnivale served as President of Local 1101 and Mr. Jim Fitzgerald served as his Treasurer, for and in the period of April 30, 1971 through Jan. 10, 1973, it was the Local's policy that checks drawn on the Local's treasury contain either/or one (1) stamped signature of either Officer mentioned and one (1) written signature, or two (2) written signatures.
- b. that no check would be honored for payment that contained two (2) stamped signatures.
- c. that this method of check signing also pertained to the Local 1101 Defense Fund Account for its entire period of existence during the 1101 strike period.
- d. that especially Defense Fund checks, because of their tremendous volume of usage, were at times, prior stamped with either Mr. Carnivale's signature or Mr. Fitzgerald's signature by Defense Fund committee people, myself included.
- e. that Mr. Carnivale and Mr. Fitzgerald counter-signed thousands of Defense Fund checks that were issued to the membership for Christmas by the International Union.
- f. that these Defense Fund checks were also prior stamped by committee people with the stamped signature of either Mr. Carnivale or Mr. Fitzgerald, who would then, in order to validate the check, counter-sign their respective checks.
- g. that Defense Fund bills, okayed by Committee people, would normally then be sent to Defense Fund check writers who would make out the defense fund check for the bill payable.
- h. that the Defense Fund Committee was made up of members who volunteered their time, and as such, at times their were insufficient staff to handle the workload.
- i. that at such times, Messrs. Carnivale, Fitzgerald, Pittman and Irvine would write out Defense Fund checks or okayed bills in order to pay the members bill on time to prevent repossession, eviction etc.
- j. that Defense Fund bills, attached to checks with Mr. Fitzgerald's stamped signature were given to Mr. Carnivale to counter-sign and vice-versa.
- k. that Mr. Robert Irvine served as Defense Fund Chairman, Mr. Larry Pittman served as Defense Fund Director and Mr. Jim Fitzgerald, elected Official (Treasurer) also served as Defense Fund Director. All had the combined responsibility of monitoring defense fund payments.
- l. that questions the bills were scrutinized by either Messrs. Fitzgerald, Pittman, Irvine, and Mr. Carnivale's signing the bills and sent one of the staff members to collect the proceeds of the Defense Fund Committee.
- m. that at no time did the U.I.W. staff make a claim that Local 1101 Defense Fund checks were not being used properly and in strict accordance with the Defense Fund rules.

and that I believe the above statements are true and factual to my firm belief and that I

signed:

Robert Irvine

BEST COPY AVAILABLE

A.113

AFSIDAVIT

I, Shila Carnvale, an employee of Local 1101 do hereby swear and attest that the following statements are true and factual:

- a. that while Mr. Ricky Carnvale served as President of Local 1101 and Mr. Jim Fitzgerald served as his Treasurer, for and in the period of April 30, 1971 through Jan. 10, 1974, it was the Local's policy that checks drawn on the Local's treasury contain either/or one (1) stamped signature of either Officer mentioned and one (1) written signature, or two (2) written signatures.
- b. that no check would be honored for payment that contained two (2) stamped signatures.
- c. that this method of check signing also pertained to the Local 1101 Defense Fund Account for its entire period of existence during the 1101 strike period.
- d. that especially Defense Fund checks, because of their tremendous volume of usage, were at times, prior stamped with either Mr. Carnvale's signature or Mr. Fitzgerald's signature by Defense Fund committee people, my self included.
- e. that Mr. Carnvale and Mr. Fitzgerald counter-signed thousands of Defense Fund checks that were issued to the membership for Christmas by the International Union.
- f. that these Defense Fund checks were also prior stamped by committee people with the stamped signature of either Mr. Carnvale or Mr. Fitzgerald, who would then, in order to validate the check, counter-sign their respective checks.
- g. that Defense Fund bills, okayed by Committee people, would normally then be sent to Defense Fund check writers who would make out the defense fund check for the bill payable.
- h. that the Defense Fund Committee was made up of members who volunteered their time, and as such, at times there were insufficient staff to handle the workload.
- i. that at such times, Messrs. Carnvale, Fitzgerald, Bittman and Irvine would write out Defense Fund checks on okayed bills in order to pay the members bill on time to prevent repossession, eviction etc.
- j. that Defense Fund bills, attached to checks with Mr. Fitzgerald's stamped signature were given to Mr. Carnvale to counter-sign and Vice-Versa.
- k. that Mr. Robert Irvine served as Defense Fund Chairman, Mr. Larry Bittman served as Defense Fund Director and Mr. Jim Fitzgerald, elected Official (Treasurer) also served as Defense Fund Director. All had the combined responsibility of monitoring defense fund payments.
- l. that questionable bills were scrutinized by either/or Messrs. Fitzgerald, Bittman or Irvine, and at Mr. Carnvale's request, the International sent one of its staff members to oversee the procedures of the Defense Fund Committee.
- m. that at no time did this UAW staff member state that 1101 Defense Fund money was not being used properly and in strict accordance with the Defense Fund rules.

I state that the above statements are true and factual to my firm belief and that I am an employee of Local 1101 as an employee as well as a Defense Fund member.

signed: Shila Carnvale

1 136-59 37th Ave., Flushing, N. Y. 11354 3 114 Old Country Rd., Mineola, N. Y. 11501 5 444 Route 111, Smithtown, N. Y. 11787
2 90-25 Surphis Blvd., Jamaica, N. Y. 11435 4 240 W. Main St., Riverhead, N. Y. 11901 6 74-09 37th Ave., Jackson Heights, N. Y. 11372

Address any reply to DISTRICT DIRECTOR at office No. _____

Department of the Treasury

District Director
Internal Revenue Service

Date: 2/26/70 In reply refer to: GS 1210 HE



Mrs. MRS M. J. CAPANZANO
13651-37 AVENUE
FLUSHING - NY 11354

Tax Return or Document: 1040

Year: 72

Agent: J. J. J. J.

Telephone Number: 426 5575

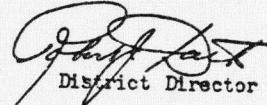
Dear Taxpayer:

Your above described tax return or document for the year indicated has been assigned to the above named agent for examination.

Please communicate with the agent, using the address or telephone number shown above, to arrange a date that will be mutually satisfactory.

Your reply within 10 days will be appreciated.

Sincerely yours,


District Director

3N73 (3-62)

A.115

Michael J. Caponegro

ATTORNEY AT LAW

136-17 41st Avenue, Flushing, N.Y. 11354

(212) 445-4080

April 23, 1975

U. S. Attorney Paul Curran
Federal District Courthouse
Foley Square
New York, New York

Dear Mr. Curran:

You may remember me as I served with you in the New York State Legislature in the 1960's.

I am bringing this matter to your attention because I remember you as a fair and considerate public official and a person who would stop an injustice in your office if you knew of it. There is an investigation going on regarding my legal fees with the New York Telephone Company Worker's Union, the Communication Worker's of America, Local 1101 of which I was Chief Counsel in 1971-1972 and Ricky Carnivale was President.

Mr. Carnivale became President after I represented him in a vicious legal battle with the incumbents wherein we proved in 2 elections that they phoned up the ballots, stuffed the ballot boxes and in short committed many transgressions of the criminal and civil law.

Mr. Carnivale entered office in April or so of 1971 and I was retained as Chief Counsel to the Union, Local 1101. Mr. Carnivale then came up for election in 1972 and certain charges were made by the opposition forces during the election of Local 1101 Officers. The election was bitter and charges were made by both sides... (none of our charges against the opposition forces have been investigated by your office.)

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

A.11

Page -2-

April 23, 1975

Paul Curran, Esq.

In July of 1971, Local 1101 went on strike. Thereafter in a general membership meeting at the Felt Form wherein 6,000 members appeared, it was voted unanimously that the Union must pay the legal fees of the members involved in criminal charges during the course of the strike. The said strike went on for approximately seven months. As Chief Counsel, many of the cases were referred to me.

Incidentally, and this is important, I and Mr. Ricky Carnivale spoke against the Local paying the legal fees, as it would be a drain on the Union Treasury, and my legal research showed that the Local should not under the existing law pay for the legal fees. The members voted this down unanimously in a screaming torrent of motions and votes. Thereafter, some 18,000 men went on strike and trucks were overturned, riots, assaults, malicious mischief and all sorts of arrests were made. Cases were coming into my office sometimes at the rate of 2 or 3 each day. I was out of my office sometimes for a week at a time just going from one Court to another and in some instances, I made no records of the individuals I represented or whose cases I had dismissed.

There were no legal bills sent out for those cases. I then set up a procedure with my Secretary to send out a form retainer when a call came in from a Union member to represent him on a Criminal matter. As the calls came in a record would be made on it, and sometime thereafter a retainer would be sent out to the Union.

I handled some 57 cases. I do not know the number as the U. S. Attorney has all of my records and files with reference to the cases I handled. I turned over all my records to Mr. Donald Buchwald when I learned of the investigation. My fees, incidentally, were under \$2,000.00 for misdemeanors and \$3,500.00 for felonies. For some 50 defendants, I either appeared in Court, picked juries, tried the case and/or filed briefs. When the calls

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A.11

Page -3-

April 23, 1975

Paul Curran, Esq.

came in for representation, my secretary sometimes immediately sent out retainers which were to the effect.... "as and for appearances in Court, picking a jury, trial of the action....\$1,500.00." In 6 or 7 cases, I don't know the exact number as your office has my files, the files were opened up, but the case never developed into a full scale file or into a full matter where I appeared in Court.

In some instances I was successful in getting the New York Telephone Company to withdraw charges or the matter just never came about. My secretary sent out the retainers. She and I were under the impression that the case would develop as all of the other 50 or so did. The charge against me is that I, in some manner, phoned up my legal bills to defraud Local 1101. When the union opposition seized upon the fact that retainers were sent out and later the case never developed to a Court appearance, they instituted suit during the election which made headlines in all of the Local Dailys. I immediately checked the files and requested a meeting with the individuals who were making the allegations to adjust any case which they felt would be unwarranted and for which they felt I received unjust enrichment. Same may or may not have occurred.

I was told by the opposition to get Carnivale to withdraw from the race and they were going to bury us. I paid \$8,500,000 out of my personal checkbook to the Union members for fees and expenses.

The law suit in the Federal District Court in the Southern District was for \$609,000.00 none of which was valid and, as I said made headlines and was successful in ousting Mr. Carnivale as President and me along with him as Counsel. An immediate complaint was made by the opposition officers and the International CWA to the I. R. S. and to your office who descended on the Union with some ten auditors to audit \$6,000,000.00 in defense funds which Mr. Carnivale and all of the officers had disbursed to the Union members. Lo and behold they found that Mr. Carnivale had received \$138.00 or so which he duly applied for to pay his

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A.1

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April 23, 1975

Paul Curran, Esq.

mortgage on his house. Complaints were made to the I. R. S. and I was audited for 1972-1973 and no irregularities were found. The fees I received were reported as income.

The point is that if phone calls come in requesting legal help and say 5 out of the 6 develop into a full scale trial and the fees are reasonable and the 6th one never does, does that mean a crime is committed and that there was intent to defraud. I submit to you that it does not.

I reasonably believed that a case would develop from the request for legal help. There is no pattern or scheme in this situation or conspiracy. There was no intent to defraud anyone out of anything. However, if unexplained a grand jury might indict, but there is no crime or conspiracy.

Carnivale the President and Fitzgerald the Treasurer who signed the checks never knew when, where or how the cases came in. The only contact they may have had was after the case came in someone in their office would call my office to tell us some name and address or phone number of a Union member who was picked up and needed legal representation. Mr. Carnivale and Mr. Fitzgerald knew nothing of the source of my bills. The bills went out because members called in for legal help, and my secretary composed a bill from each phone call.

I have given all my law firm checks for the years, 1971, 1972 and 1973 which Mr. Buchwald requested. I have given him any and all records and documents he wanted together with my income tax statements for 1971-1972 and all the legal files of clients represented in the Union. I have appeared at his office and answered any and all questions, and I will appear at your office and answer any and all questions which you may put to me.

A120

A.12

Page -5-

April 23, 1975

Paul Curran, Esq.

If the naked bills were put before a grand jury and the person for whom the bill was sent out, then took the stand and said, "I never had a trial, I never went to Court," I could imagine that a grand jury might indict, but this would be a great injustice. There was no intent to deceive or defraud on those 6 or 7 instances of the bills. Will Mr. Buchwald put in those other 50 cases before the grand jury and show that in 50 cases I appeared in Court and had the matter dismissed. Mr. Buchwald, I am sure is convinced I did no wrong, but rather than recommend a dismissal of the entire case and charges, he would rather throw it before a grand jury and not have the burden on his shoulders of dismissing the charges.

I submit to you that these charges should be dismissed. That if there is any monies owed, it should be left to a Civil Court Judge and jury to decide if there was any unjust enrichment. I use the words "monies owed" because it may well be that the Union owes me money. I am sure that if I was overpaid on some cases because my fees were too high, for some of the work I did, then it follows that if my fees were too low, I should be compensated also. I have spoken to many lawyers with reference to the fees charged for the felonies. To give you an idea, one lawyer charged \$25,000.00 for a misdemeanor and another \$35,000.00 for a small felony. Match this against my fees and the Union owes me money. As a lawyer, you can readily see that if I wished and if I had any sort of "deals" going, I could have submitted bills for \$15,000.00 for the felonies and no one could be heard to complain. I did not do this. My fees were very low and very reasonable in all the matters which I handled.

I ask Mr. Curran for your consideration in looking into this matter. I have held nothing back, no checks or records

A121

A.12

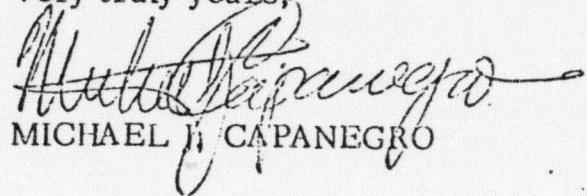
Page -6-

April 23, 1975

Paul Curran, Esq.

are in my possession and as I have stated, I will further answer any of your questions if you wish to meet with me in your office.

Very truly yours,



MICHAEL J. CAPANEGRO

MJC:laa

cc: Donald Buchwald, Esq.
cc: Michael Rosen, Esq.
cc: Richard Carnivale

A122

A-12

elimination, I have finally come to the conclusion
you could be looking for is "unauthorized use of funds". This charge
entered my mind due to the fact that there was overwhelming evidence that
there was authority to pay me from the Union Funds.

Mr. Carnivale and I were in Federal Civil Court before Judge Jacob
with the attorney for the CWA, 1101. He, ridiculously, seems to be under the
impression that there was no authority for Mr. Carnivale to write these checks
to pay my legal fees. Just on an argumentative bases, the Union says with
reference to the Civil case that the \$609,000.00 which they claim was not
spent through proper channels, is the sole responsibility of Mr. Carnivale.
No one else in the Union had this great authority to spend this money except
him and him alone. He is responsible for everything. If this is so, can any
now be heard to say that he did not have the authority besides spending the
\$609,000.00 that he also had the authority to pay my legal fees. But this is
argumentative, I would not write this letter on that basis alone.

Remember, that I informed you that there was a meeting of approx-
imately 6,000 members at the Felt Forum at Madison Square Garden; and
that meeting in 1971 sometime after the strike of July 1971, the Union members
met and unanimously endorsed the resolution that "the CWA Local 1101 shall
be responsible for the payment of legal fees of members involved in criminal
charges during the strike". The resolution may not be in those exact words
but it is the basic thrust and statement of the individuals who proposed it
the resolution that was passed unanimously. You must (Mr. Carnivale's
against the resolution) remember that the CWA members control the Union.

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A.12

Page 2 cont'd.

everything in the Union and can do everything or anything they want with the Union and its funds within the legal bounds of its by-laws. In other words, the Union members by amending by-laws, could get up and in a mass meeting, cut off the salaries of all of the officers, if they so desired. So that the Union general meeting is a mandate to the Board of Governors and officers. This is the law as stated in the by-laws presently in existence. Therefore, when that resolution was passed by the general membership, Mr. Carnivale and the Board of Governors, under no circumstances, at any time, could go against that mandate to pay the legal fees of the members during the strike, involved in criminal charges. If the Board of Governors had met in a duly called meeting and resolved that they would not pay these legal fees of members, Mr. Carnivale and the officers would be violating the rules of the Union if they went along with that resolution. So what is the overall effect of this resolution and the present matter? The effect is that each Union member became a potential client in and by himself. There was no person to go to. He only had to be picked up during the strike on a criminal charge and he could call his own attorney, go to court and the attorneys bill would be paid by the Union. What happened, is that when the Union members got picked up the Union recommended me as the attorney and most of them chose me as their lawyer. Many of them did not. They retained their own counsel. One of the very executive officers, Mr. Joseph MacAleer, who I believe, is stating that there was no authority for Mr. Carnivale to pay the legal fees of the Union members. himself retained me to represent him. At a certain time, he did not want

This firm, I am informed, upon information and belief, were then paid their legal fees by no other body than the Union CWA Local 1101 who now claims that Mr. Carnivale could not pay my legal fees.

Further absolute proof that there was authority to pay these legal fees is that the firm of Messrs. J. J. O'Donnell, who was the attorney for

Page 3 cont'd.

attorneys, Kaming & Cunningham to represent some 20 or 30 strikers picked up in a previous strike in 1970. This same firm of Schwartz & O'Donnell is now advising the present Union officers in this matter and is their attorney in the Civil matter against Carnivale and me for \$609,000.00. How could Schwartz & O'Donnell, if they say there was no authority to pay these legal fees, possibly have retained the firm of Kaming & Cunningham to defend the persons picked up in the strike of 1970. And, upon information and belief, I am informed that there never was a general meeting in that instance which would give authority to the Board of Governors to pay legal fees of members picked up during the strike for criminal charges. So, we now have the firm of Schwartz & O'Donnell representing the Union members who are saying there was no authority to pay any legal fees, when in the exact very concise situation Schwartz & O'Donnell retained other counsel to defend the criminal charges of members in 1970. You know, I showed you that Retainer Agreement which carried out the previous negotiations between Schwartz & O'Donnell and Kaming & Cunningham. I do not know if Schwartz & O'Donnell received any forwarding fees from Kaming & Cunningham or if they shared in any of the fees for those members. I am not saying that there was anything wrong in it, I am saying that these very people are saying that there was no authority to pay my legal fees. Why wasn't there? I had a general membership meeting where the members mandated that legal fees be paid, and only authorized officers sign the checks.

Can the firm of Schwartz & O'Donnell and Mr. Mac Aleer now be heard to say when they directed payment from the Union either directly or indirectly or caused funds to be paid to lawyers on their behalf for criminal charges, now be heard to say that their fees were legal, authorized and proper and that there was no authority. I submit to you Mr.

11-1

Page 4

The authority is complete and you should forthwith dismiss this matter. If there is a challenge as to the amount of the fees, it should be left to a Civil Court and it will be resolved therein. As far as the responsibility of signing the checks go and who was authorized to do it, there are two statements by two young ladies who served in the office and were there everyday as secretaries with the defense fund directors who were all employed at the same time and say and were part of the entire operation. Their statements are marked "affidavits" although they are not, but these women have made these statements and come forth and showed exactly what occurred and how the checks were made out. The instances wherein Mr. Carnivale wrote the check to me personally, was merely one of convenience as I was in there almost daily in his office and as time would pass at the end of a weary day, I would say, "Rickie, do you have a check for me. I am doing alot of work in these legal matters" and he would say, "O.K." and he would call Mr. Fitzgerald, ask him to write up the check or get him a check in many instances and would then write the check right out there as I sat in front of him. He would then pull out all of my current bills and add them up and, in some instances, would only pay a couple of them and tell me that I would have to wait a week or two or a month for more payment. That was the entire truth of the matter as to how my bills were paid. In some instances, I received checks in the mail on the bills, as I would call up the secretary and ask for a check and it would come in the mail. That this method of paying bills was the same as any other local expense bill as in rent, printing, repairs of office equipment and supplies and all of the many expenses that were daily occurrence in the local. A bill would be paid out, it would be paid out, if it was owing, it would be paid. And that is what happened with me. The only difference being was that in many instances, I was present and I would request it personally from Mr. Carnivale and he would then write me a check. Only because of the fact that I was there daily and working on Union business and would be able to sign the checks to pass the name of the suppliers.

A.126

Page 5

1101 would happen to have been present at the time and were there for some reason on a daily basis that they would come in and request a check for supplies rendered and the same situation could have easily occurred with any supplier of office supplies.

I submit to you that very few businessmen of any nature ever go behind their lawyer's bill and question it. I would submit to you that Mr. Dempsey, the President of Local 1101, if he were put on the stand and asked whether he went behind every legal bill or other bills, and asked how many hours did you spend on this case, where did you go, what lawyers worked on it, how many times were you in Court, and so on, that these questions would be answered in the negative. I am a respected member of the Bar and when I submitted my bills to Mr. Carnivale, he looked at them, and assumed that they were right and proper. The fact that some of the retainers on the cases were for cases that came in which did not come to full fruition in a full scale trial; was after the fact, and did not taint my activities with reference to the bills. As stated, I paid all expenses and portions of my legal fees to other attorneys who worked on the criminal cases with me. I again state to you as I did in your office that when the situation of legal fees was challenged, I immediately said to Mr. Bittman and Mr. James Fitzgerald, "Let's sit down, if there is any overcharge, I will adjust", and their answer was, as carried from their superiors in the Union, "No, we are going to get you and Carnivale and we are going to smear your name in the newspapers. Get Rickie Carnivale to withdraw from the race". Mr. Bittman and Mr. Fitzgerald acted very honorably in all of our negotiations and told the truth and told it like it was, as told.

Another important consideration-if I am to be criticized for cases which did not develop fully, will you credit me with additional fees for those matters wherein I billed less than I should have received-Isn't it a two way street? Since this matter has come up I have consulted numerous attorneys in the criminal field and my bills were in many felony cases very low.

A.127

Page 6

If you look at the overall picture, I am actually behind financially. In the Civil action against me I am preparing a substantial Civil claim for increase of fees for unjust enrichment by the Union

So my conclusion is; if my fees are reasonable for legal work I did, and very low in some instances; and if Carnivale and Fitzgerald had the authority to write the checks (which they had to under the membership mandate and the proper procedures were followed; and there is no evidence of any illegality with reference to any monies taken from the Union; and Carnivale never knew beforehand who, how, when or where a client came from or when or what the amount of a bill was to be rendered; and my secretary prepared all retainer bills in most instances when the client called; and phrased the bills on the work to be done; and and it is custom that there is a fee due and owing merely for opening a file and advising a client; and the motivation of the present Union officers who charged Carnivale and me with stealing \$609,000.00 as stated in the newspapers during the height of an Election of the "Accuser" forces against the Carnivale forces; then, all of the above should as an overall picture give your office sound and justifiable basis to place these improperly motivated and palacious charges in their proper perspective and dismiss same.

A.128

AFFIDAVIT

I, Patricia Smith, an employee of Local 1101 do hereby swear and attest that the following statements are true and factual:

- a. that while Mr. Ricky Carnivale served as President of Local 1101 and Mr. Jim Fitzgerald served as his Treasurer, for and in the period of April 30, 1971 through Jan. 10, 1973, it was the Local's policy that checks drawn on the Local's treasury contain either/or one (1) stamped signature of either Officer mentioned and one (1) written signature, or two (2) written signatures.
- b. that no check would be honored for payment that contained two (2) stamped signatures.
- c. that this method of check signing also pertained to the Local 1101 Defense Fund Account for its entire period of existence during the 1101 strike period.
- d. that especially Defense Fund checks, because of their tremendous volume of usage, were at times, prior stamped with either Mr. Carnivale's signature or Mr. Fitzgerald's signature by Defense Fund committee people, my self included.
- e. that Mr. Carnivale and Mr. Fitzgerald counter-signed thousands of Defense Fund checks that were issued to the membership for Christmas by the International Union.
- f. that these Defense Fund checks were also prior stamped by committee people with the stamped signature of either Mr. Carnivale or Mr. Fitzgerald, who would then, in order to validate the check, counter-sign their respective checks.
- g. that Defense Fund bills, okayed by Committee people, would normally then be sent to Defense Fund check writers who would make out the defense fund check for the bill payable.
- h. that the Defense Fund Committee was made up of members who volunteered their time, and as such, at times their were insufficient staff to handle the workload.
- i. that at such times, Messrs. Carnivale, Fitzgerald, Bittman and Irvine would write out Defense Fund checks on okayed bills in order to pay the members bill on time to prevent repossession, eviction etc.
- j. that Defense Fund bills, attached to checks with Mr. Fitzgerald's stamped signature were given to Mr. Carnivale to counter-sign and Vice-versa.
- k. that Mr. Robert Irvine served as Defense Fund Chairman, Mr. Larry Bittman served as Defense Fund Director and Mr. Jim Fitzgerald, elected Official (Treasurer) also served as Defense Fund Director. All had the combined responsibility of monitoring defense fund payments.
- l. that questionable bills were scrutinized by either/or Messrs. Fitzgerald, Bittman or Irvine, and at Mr. Carnivale's request, the International sent one of its staff members to oversee the procedures of the Defense Fund Committee.
- m. that at no time did this CIL staff member state that 1101 Defense Fund money was not being used properly and in strict accordance with the Defense Fund rules.

I declare that the above statements are true and factual to my firm belief and that I

signed: Patricia Smith

AFFIDAVIT

I, Shila Carnivale, an employee of Local 1101 do hereby swear and attest that the following statements are true and factual:

- a. that while Mr. Harry Carnivale served as President of Local 1101 and Mr. Jim Fitzgerald served as his Treasurer, for and in the period of April 30, 1971 through Jan. 10, 1973, it was the Local's policy that checks drawn on the Local's treasury contain either/or one (1) stamped signature of either Officer mentioned and one (1) written signature, or two (2) written signatures.
- b. that no check would be honored for payment that contained two (2) stamped signatures.
- c. that this method of check signing also pertained to the Local 1101 Defense Fund Account for its entire period of existence during the 1101 strike period.
- d. that especially Defense Fund checks, because of their tremendous volume of usage, were at times, prior stamped with either Mr. Carnivale's signature or Mr. Fitzgerald's signature by Defense Fund committee people, my self included.
- e. that Mr. Carnivale and Mr. Fitzgerald counter-signed thousands of Defense Fund checks that were issued to the membership for Christmas by the International Union.
- f. that these Defense Fund checks were also prior stamped by committee people with the stamped signature of either Mr. Carnivale or Mr. Fitzgerald, who would then, in order to validate the check, counter-sign their respective checks.
- g. that Defense Fund bills, okayed by Committee people, would normally then be sent to Defense Fund check writers who would make out the defense fund check for the bill payable.
- h. that the Defense Fund Committee was made up of members who volunteered their time, and as such, at times their were insufficient staff to handle the workload.
- i. that at such times, Messrs. Carnivale, Fitzgerald, Bittman and Irvine would write out Defense Fund checks on okayed bills in order to pay the members bill on time to prevent repossession, eviction etc.
- j. that Defense Fund bills, attached to checks with Mr. Fitzgerald's stamped signature were given to Mr. Carnivale to counter-sign and Vice-Versa.
- k. that Mr. Robert Irvine served as Defense Fund Chairman, Mr. Larry Bittman served as Defense Fund Director and Mr. Jim Fitzgerald, elected Official (Treasurer) also served as Defense Fund Director. All had the combined responsibility of monitoring defense fund payments.
- l. that questionable bills were scrutinized by either/or Messrs. Fitzgerald, Bittman or Irvine, and at Mr. Carnivale's request, the International sent one of its staff members to oversee the procedures of the Defense Fund Committee.
- m. that at no time did this UAW staff member state that 1101 Defense Fund money was not being used properly and in strict accordance with the Defense Fund rules.

I state that the above statements are true and factual to my firm belief and that I also served the membership of Local 1101 as an employee as well as a Defense Fund

signed: Shila Carnivale

Michael J. Capanegro
ATTORNEY AT LAW

136-17 41st Avenue, Flushing, N.Y. 11354
(212) 445-4080

December 30, 1975

Mr. Donald Buchwald
U. S. Attorney's Office
Southern District
Foley Square
New York, New York 10007

Dear Mr. Buchwald:

On December 29, 1975, in the United States District Court of the Southern District of New York, a judgment of dismissal of the civil suit wherein Local 1101 Communication Workers of America was Plaintiff and Richard Carnivale and Michael J. Capanegro were Defendants, was dismissed with prejudice by Judge Marvin E. Frankel and filed in said Court.

That in addition thereto, there was a signed statement by the attorneys of record that the complaint alleging fraud and deceit, "without proper authority", and any references to false or fraudulent, were withdrawn from the complaint as if having never been placed therein. Further, it was admitted by the attorneys and filed in the District Court that on all cases I had performed services. All allegations with reference to Mr. Carnivale not having proper authority to pay me were withdrawn from the allegations of the complaint as if they never were put there in the first place, "ab initio".

Paragraphs which alleged any kind of false and fraudulent conduct were totally omitted and deleted as of the first instance when the complaint was made, and again as if they had never been placed therein. That there was a total admission that all of my approximately \$150,000.00 which was paid to me was properly paid because the paragraphs which stated that the payments were improper were totally withdrawn and omitted as if never having been stated in the complaint. The allegation "None of the payments to him out of the C.W.A. Local 1101 Defense Fund totalling as shown over \$113,000.00 were authorized..." is totally, omitted, withdrawn, and taken out of the complaint as if never having been placed therein. That the officers, the President of the union signed a general release to Richard Carnivale who did not pay one

(cont'd.)

Mr. Donald Buchwald

December 30, 1975

penny for the general release. The officer, the President of Local 1101, also signed a general release to Michael J. Capanegro releasing him from any and all claims of any nature for a small token payment, the amount of which was not more than 15% of the legal fees which Capanegro would have paid to the law firm in New York City to try this action. A copy of the retainer is enclosed.

So Mr. Buchwald, all of your accusations and insinuations that my legal fees of \$150,000.00 were improperly paid and Mr. Carnivale's unauthorized payments to me were some sort of a scheme are totally without foundation and merit.

We must, I think you will agree, give some credence to the competency of the twelve or fifteen man lawyer firm of Schwartz & O'Donnell whose entire might and weight have come to the conclusion that Mr. Carnivale and I committed no fraud and deceit and stole no money as they originally alleged of \$609,000.00 and all of my legal fees. The law firm representing Local 1101, which is their alter ego, and President of the Local, have both signed statements exonerating and consenting to a judgment of dismissal of their law suit against us. The reason is obvious. They could not, by a clear preponderance of the credible evidence, make out a case against us, and believe me, they tried very, very hard. This was a vicious civil suit where no quarter was given in any instance. Upon consultation with my counsel, Mr. Roy Cohn and Mr. Rosen, the only thing that could be proven beyond a reasonable doubt is my innocence of any wrong-doing or intent to commit a crime. So we now have this monstrous \$609,000.00 charge against Mr. Carnivale and me and \$150,000.00 charge against me individually dismissed totally with prejudice never to be brought about again. The President and attorney for Local 1101, C.W.A., and its members, now withdraw all of the fraudulent allegations of improper authority by Mr. Carnivale and the Union signing a statement releasing us from any further liability. I am enclosing the documents of stipulation discontinuance and a copy of Judge Marvin Frankel's order, and a copy of the general release from Mr. Dempsey of Local 1101.

There is no question that you can pursue this matter regardless of the outcome of the civil matter. As Judge Frankel stated in his article in the New Leader about U. S. attorneys getting indictments, and published in the Law Journal on November 17, 1975, that "Day in and day out the Grand Jury affirms what the prosecutor calls upon it to affirm". No question that you can get an indictment on anybody at anytime for any reason at any place under any circumstances.

The law, however, has granted one small redress to individuals who have been so maligned. The case of the individual who was charged with a conspiracy to assassinate the President by an over zealous prosecutor when he had no case and did not "reasonably believe that he could prove beyond a reasonable doubt the guilt of the defendant" was held liable in a civil action, personally, for damages sustained by the alleged defendant.

(cont'd.)

Mr. Donald Buchwald

December 30, 1975

My damages are monumental. I have gone from earning six figures to a gross of under \$35,000.00. I have had to go into other ventures and businesses as my reputation was ruined by this Union matter.

I also wish to inform you that if you are under the impression, or if any of my previous communications to you implied that my secretary had anything more to do than to write out and type up the procedures which I had dictated and set up for her, then you are acting under a misapprehension. All the correspondence, all of the retainer bills, all of the amounts thereon, and the procedures for sending them out, were set up by me. My secretary was merely a conduit of my office procedures. She had no choice except to carry out the procedures that I set up for her.

Very truly yours,

Michael J. Capanegro
MICHAEL J. CAPANEGRO

MJC:ac
Enclosures

CC: Joseph McAleer
Lawrence Linaro
Larry Bittman
James Fitzgerald
Nicholas Fittapaldi
Joseph Connelly
Mr. Zuckerman
John Hyland
John O'Keefe

*p.s. please return my
files documents &
records & checks
MJC.*

To all to whom these Presents shall come or may Concern,

Greeting: KNOW YE, That Local 1101, Communications Workers of America,
AFL-CIO, by Edward Dempsey, its President,

for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United
States of America and other valuable consideration ~~dollars of~~)
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ to it in hand paid by

MICHAEL CAPENEGRO and RICHARD CARNIVALE

the receipt whereof is hereby acknowledged, ~~has~~ has remised, released, and forever discharged and by
these presents does for its successors
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ and assigns, remise, release and forever discharge the said

MICHAEL CAPENEGRO and RICHARD CARNIVALE,
their

heirs, executors, administrators, successors and assigns of and from all manner of actions, causes of
action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, con-
tracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions,
claims and demands whatsoever, in law, in admiralty, or in equity, which against them, it

ever had, now has or which it, its successors and assigns ~~XXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~ hereafter can, shall or may have for, upon or by reason of any matter, cause or thing
whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

In Witness Whereof, I
the ~~12th~~ ^{22nd} day of December
Sealed and delivered in the presence of

have hereunto set my hand and seal
1975

Michael Stein

Edward Dempsey
EDWARD DEMPSEY
President, Local 1101
Communications Workers of America,

State of NEW YORK

County of NEW YORK

ss.:

On the ~~12th~~ ^{22nd} day of December

1975

before me personally came

EDWARD DEMPSEY

to me known, and known to me to be the individual
instrument, and duly acknowledged to me that he

described in, and who executed the foregoing
executed the same.

NOTARY PUBLIC
NEW YORK

Michael Stein

A.134

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 73 Civ. 3340
(M. E. F.)

LOCAL 1101, Communications Workers
of America, AFL-CIO

Plaintiff

against

RICHARD (a. k. a. Ricky) CARNIVALE
and MICHAEL J. CAPANEGRÒ

Defendants

STIPULATION OF DIS-
CONTINUANCE WITH
PREJUDICE

RICHARD (a. k. a. Ricky) CARNIVALE

Def. and Third party plaintiff

against

JOSEPH MACALEER,
DENNIS SERRETTE,
EDWARD DEMPSEY,
LAWRENCE LANERRO (a. k. a. Larry),
PATRICK CLARK
PHILLIP VETTEL,
LARRY BITTMAN,
JAMES FITZGERALD,
ROBERT IRVINE,
NICHOLAS FITTAPALDI, and JOSEPH CONNELLY,
LOCAL 1101, Communications Workers
of America, AFL-CIO

Defendants

It is hereby stipulated by and between the attorneys for the respective parties herein and Mr. Richard Carnivale pro se that the above-entitled matter is hereby discontinued with prejudice to all parties including the claims, counter claims and third party complaint. That is further stipulated as a condition to the discontinuance of this matter that the following paragraphs of the complaint are amended to read as follows in their place and stead:

Paragraph 9 of plaintiff's complaint is amended to read as follows:

"In an investigation of these payments Local 1101 has discovered that several of the retainer bills submitted by Capanegro were in excess of the amount that he would ordinarily be entitled to for the services he performed. That as a result he was unjustly enriched."

That the above paragraph is substituted in place of Paragraph 9, the first paragraph beginning with the words "in an investigation" and ending with the words "to have performed".

Paragraph 9 A is amended to read as follows middle of page 5 of the complaint -

The words "without proper authority" and "which he then knew or should have known to be false and fraudulent" are withdrawn from the complaint as if never having been placed therein.

Paragraph 9 B, bottom of page 5 is amended to read as follows:

The words "without proper authority" and the words "which he then knew or should have known to be false and fraudulent" are omitted from the complaint as if they had never been placed therein.

Paragraph 9 C, bottom of page 6 of the complaint is amended to read as follows:

The words "without proper authority" and the words "which he then knew or should have known to be false and fraudulent" are entirely omitted from the complaint as if never having been placed therein.

Paragraph 9 D is amended to read as follows:

That on page 7 of the complaint, the words "without proper authority" and the words "which he then knew or should have known to be false and fraudulent" are withdrawn and omitted from the complaint as if never having been placed therein.

Paragraph 9 E, page 8, at the bottom thereof, is amended to read as follows:

The words "without proper authority" and the words "which he then knew or should have known to be false and fraudulent" are withdrawn and omitted from the complaint as if never having been placed therein.

Paragraph 10, amended to read as follows:

The sentence, "It is not customary for the local president to write out checks," is withdrawn as if same had never appeared therein.

Paragraph 12, page 10 of the complaint, is amended to read as follows:

The following sentence in paragraph 12 is entirely eliminated and omitted as if it had never been stated in the complaint:

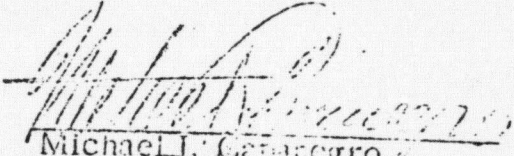
"On information and belief, none of the payments to him out of the GVA Local 1101 Defense Fund, totaling as shown over One Hundred Thirteen Thousand (113,000) Dollars, were authorized as required by the Defense Fund rules. The full extent of the fraud perpetrated by him can be ascertained only in an accounting in this Court."

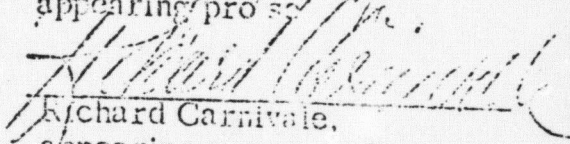
Paragraph 13 of the complaint is amended to read as follows (page 11, top)

and omitted as if never having been placed therein. From the record ending with the words "on Local 1101."

Paragraph 3 is amended to read as follows: After the words "Local 1101" the words "defendant Carnivale" are omitted and in its place the words "Communications Workers of America, Local 1101", are substituted.

THAT A SUBSTITUTED COPY BE SUBMITTED TO THE
APPLIED FOR.


Michael L. Caponegro,
appearing pro se.


Richard Carnivale,
appearing pro se and as Third
Party Plaintiff

O'Donnell & Schwartz
by John J. O'Donnell
O'Donnell & Schwartz
Attorneys for Communications
Workers of America, Local 1101

Dated: December 22, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LOCAL 1101, Communications Workers
of America, AFL-CIO,

Civil Action No. 73
Civ. 3340 (M.E.F.)

Plaintiff,

-against-

RICHARD (a.k.a. Ricky) CARNIVALE
and MICHAEL J. CAPANEGRO,

Defendants.

JUDGMENT OF DISMISSAL

RICHARD (a.k.a. Ricky) CARNIVALE

Def. and Third Party Plaintiff,

-against-

JOSEPH MACALEER,
DENNIS SERRETTE,
EDWARD DEMPSEY,
LAWRENCE LANERRO (a.k.a. Larry),
PATRICK CLARK,
PHILLIP VETTEL,
LARRY BITTMAN,
JAMES FITZGERALD,
ROBERT IRVINE,
NICHOLAS FITTAPALDI, and JOSEPH CONNELLY,
LOCAL 1101, Communications Workers
of America, AFL-CIO,

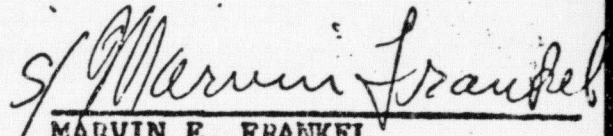
Defendants.

-----x
It having been reported to the court by written
stipulation that the above entitled matter is discontinued with

prejudice and upon reading the foregoing stipulation of
discontinuance and the attorneys consenting thereto, it is

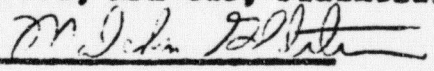
DECREED AND ADJUDGED that the above entitled matter
and the complaint herein is dismissed with prejudice and without
costs to the parties hereto.

Dated: December 29, 1975

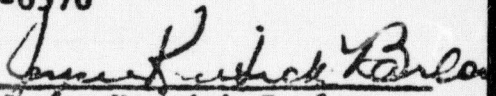

MARVIN E. FRANKEL
Judge of the Southern
District Court

The foregoing judgment is
hereby consented and agreed
to:

C. DONNELL & SCHWARTZ
SCHWARTZ & O'DONNELL
Attorneys for Local 1101,
Communications Workers of
America, AFL-CIO, Plaintiff

By: 
Malcolm Goldstein

BARLOW, KATZ & BARLOW
Attorneys for Defendants
233 Broadway
New York, N.Y. 10007
233-0570

By: 
Joyce Krutick Barlow

A139 A.13

CUNNINGHAM & KAMING

ATTORNEYS AT LAW
122 EAST 42ND STREET
NEW YORK, N. Y. 10017

OX 7-0133

PATRICK J. CUNNINGHAM
JOSEPH S. KAMING

May 10, 1971

GOVERNMENT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

46A

~~10~~

Mr. R. Carnivale, President
Communication Workers of America
Local 1101
224 West 49th Street
New York, New York

Dear Mr. Carnivale:

I am enclosing a copy of a retainer per agreement for services which we have been rendering. Also enclosed is an explanatory letter which was sent originally to Mr. Banker.

We would appreciate immediate payment of this retainer. We are continuously devoting time and out-of-pocket expenses to these difficult criminal matters.

We wish you the greatest success as president and are available at any time to discuss these matters with you.

Sincerely,

CUNNINGHAM & KAMING

Joseph S. Kaming

Joseph S. Kaming

JSK:ld
Enc.

A.140

CUNNINGHAM & KAMING

ATTORNEYS AT LAW

122 EAST 42ND STREET

NEW YORK, N. Y. 10017

OR 7-0133

PATRICK J. CUNNINGHAM
JOSEPH S. KAMING

April 23, 1971

Mr. Howard Banker
Communication Workers of America
Local 1101
224 West 49th Street
New York, New York

Dear Howard:

In criminal matters, we are presently or have represented in connection with the January telephone strike the following 18 defendants:

Barnes, Shelby	Mancin, Dennis
Bragg, Edwin	Mollo, Joseph
Coticchio, Deminic	O'Connor, Michael
Davi, Richard	Palmer, George
Decker, Larry	Pardoch, Rogers
Derring, William	Rose, Joshua
Devine, Frank	Robins, Raymond
Farrar, Harold	Ryttenberg, Harry
Ganser, Thomas	Thoman, John

Through our efforts, charges have been dismissed against four of eighteen defendants and no defendant has been convicted. Already over forty-seven hours have been expended in Court time. It appears that there may be a necessity to conduct, at least, five trials. Expert testimony fees and transcript costs will most likely exceed Three Thousand Dollars.

At this time we request a retainer payment of Five Thousand Dollars to be applied against our charges and expenses.

A141

A.14

Mr. Howard Banker

Page 2

April 23, 1971

I enjoyed talking with you on Wednesday and
we shall proceed in the thorough advocacy for each of
the defendants.

Very truly yours,

CUNNINGHAM & KAMING

Joseph S. Kaming
Joseph S. Kaming

JSK:ld

A142 A-14

MICHAEL J. CAPANEGRO
ATTORNEY AT LAW

GOVERNMENT'S

EXHIBIT

U. S. DIST. COURT
S. D. OF N. Y.

136-51 37th Avenue
Flushing, N. Y. 11354

June 30, 1971

Cunningham &
122 East 42nd Street
New York, N.Y. 10017

Att: Joseph S. Kaming, Esq.

Dear Mr. Kaming:

I am enclosing herein an Original and two copies of a retainer agreement pursuant to our conversation regarding the defense of individuals mentioned in said agreement.

Please sign the original and one copy and return same to my office retaining the third copy for your files. I will hold the original agreement in escrow pending receipt by you of the executed copy.

Very truly yours,

Michael J. Capanegro
MICHAEL J. CAPANEGRO

MJC/jr
Encls.

A143

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THIS AGREEMENT made this day of
1971, by and between COMMUNICATION WORKERS OF AMERICA,
Local 1101, having its principal place of business at
224 West 49th Street, New York, New York, hereinafter cal-
led the "CLIENT" and CUNNINGHAM & KAMING, attorneys-at-law,
with offices at No. 122 East 42nd Street, New York, New York
10017, hereinafter called the "ATTORNEY."

W I T N E S S E T H :

That in consideration of the mutual covenants and
agreements herein contained, the parties hereto do hereby
agree as follows:

1. The CLIENT does hereby employ the ATTORNEY as
its attorney to represent and defend in the Criminal Court
of the City of New York, the following named persons:

SHELBY BARNES, EDWIN BRAGG,
DEMINIC COTICCIO, RICHARD DAVI,
LARRY DECKER, WILLIAM DEERING,
FRANK DEVINE, HAROLD FARRAR,
THOMAS GANSER, DENNIS MANCIN,
JOSEPH MOLLO, MICHAEL O'CONNOR
GEORGE PALMER, ROGERS PARDOCH,
JOSHUA ROSE, RAYMOND ROBINS,
HARRY RYTTEBERG, JOHN THOMAN.

It is understood that the services of ATTORNEY
under this AGREEMENT shall be limited to the defense of
crimes charged as a result of the January, 1971, telephone
craftsmen strike by CLIENT.

2. The ATTORNEY accepts such employment and
retainer and agrees to render and perform any and all legal

A. 144

services of whatever kind and nature to properly defend the above-named persons in criminal actions currently pending in the Criminal Court of the City of New York (which criminal actions resulted from the above-mentioned strike by CLIENT'), including but not limited to the following: all necessary investigations for proper defense; all appearances of whatever nature; all motions necessary to properly protect the rights of the above-named persons; to try all cases when necessary.

3. That the ATTORNEY shall pay for all of the reasonable expenses incurred in the aforementioned defense of the above-named persons except as hereinafter stated.

4. It is understood by the parties hereto, that if this retainer is declared by the Courts to be improper and illegal because the CLIENT cannot undertake such criminal defense, then in the event of a judgment by a Court of law adjudging this contract of retainer to be invalid, this contract shall terminate and all monies paid to the ATTORNEY by the CLIENT shall be returned to the CLIENT. The ATTORNEY is not thereby precluded from seeking his fees from the above-named individuals or from CLIENT.

5. That each of the above-named persons is presently being defended by the ATTORNEY and legal work and investigations have been performed by the ATTORNEY. All of the previous legal work done by the ATTORNEY of the nature specified herein shall be included herein.

6. That the CLIENT shall pay to the ATTORNEY as compensation for the services to be performed by him, as

hereinbefore set forth, the sum of \$18,500. The payments shall be as follows:

\$5,000.00	upon the execution of this AGREEMENT
\$4,000.00	when nine of the cases have been disposed of in the Criminal Court of the City of New York
\$4,500.00	when twelve of the cases have been disposed of in the Criminal Court of the City of New York
\$5,000.00	upon completion in the Criminal Court of the City of New York of all eighteen cases or on October 1, 1971 if all cases have been disposed of except the cases of any defendants who fail to properly appear

7. That the ATTORNEY, when necessary, and when directed by the Chief Counsel of the CLIENT, one MICHAEL J. CAPANEGRO of 136-51 37th Avenue, Flushing, New York, shall take an appeal to the Appellate Term from the Criminal Court of the City of New York and shall be paid upon such appeal the sum of \$750 plus reasonable and necessary expenses incurred therefor.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

CUNNINGHAM & KAMING

COMMUNICATION WORKERS OF AMERICA

By _____

By _____

A.146

USA 33a-475
(ED. 4-23-71)

GOVERNMENT'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

46C

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COMMUNICATIONS WORKERS OF AMERICA, A.F.L.-C.I.O.

224 WEST 49TH STREET, NEW YORK, N.Y. 10019

TEL. 581-1500 TAPE 581-1511

July 28, 1971

Cunningham and Kaming
Attorneys at Law
122 East 42nd Street
New York, NY 10017

Dear Mr. Cunningham:

I am enclosing an executed contract as per your letter dated July 12, 1971, in regard to legal restoration of the members to the New York Telephone Company.

There will be a monetary limit for legal fees of \$750. per member, and no petition shall be drawn until you consult with me regarding same, and I authorize by letter, institution of such legal action. There will be no expenses attending these cases.

MJC:ps
opeui/153

Very truly yours,

Michael J. Savanegro
Michael J. Savanegro, Esq.
Chief Council, 1101

A147

A.14

GOVERNMENT'S

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

46D

CUNNINGHAM & KAMING

ATTORNEYS AT LAW
122 EAST 42ND STREET
NEW YORK, N. Y. 10017
NY 7-0133

September 27, 1971

Michael J. Capanegro, Esq.
136-51 37th Avenue
Flushing, New York 11354

Dear Mr. Capanegro:

Pursuant to the agreement with the Communication Workers of America, Local 1101 for the representation of defendants arising from the January, 1971 strike, the following sums in addition to the \$5,000 paid upon execution of our agreement are now owing:

\$8,500 for the disposition of 12 cases.

I call to your attention that only one defendant has been convicted, pleading to a violation after being charged with a misdemeanor. All the others have been acquitted except for Larry Decker, who has disappeared and left the jurisdiction of the Court.

We would appreciate immediate payment of the \$8,500 owing. Attached is a specific bill for our services.

Very truly yours,

CUNNINGHAM & KAMING

JSK:ld
Enc.

Joseph S. Kaming

CC: COMMUNICATION WORKERS
OF AMERICA
LOCAL 1101
204 WEST 49TH ST.
NEW YORK, N.Y.

A148

A.1

CUNNINGHAM & KAMING

ATTORNEYS AT LAW

122 EAST 42ND STREET

NEW YORK, N. Y. 10017

NY 7-0133

PATRICK J. CUNNINGHAM
JOSEPH S. KAMING

September 27, 1971

Com. Union Workers of America
Loc. 1
224 West 49th Street
New York, New York

TO

CUNNINGHAM & KAMING

Per agreement -

\$ 8,500.00

The 12 cases arising
from January 1971
strike disposed of
are:

Barnes, Shelby
Davi, Richard
Derring, William
Farrar, Harold
Ganser, Thomas
Devine, Frank

Mollo, Joseph
O'Connor, Michael
Pardoch, Rogers
Rose, Joshua
Thoman, John
Decker, Larry (avoids
jurisdiction)

A.149



COMMUNICATIONS WORKERS OF AMERICA, A.F.L.-C.I.O.
224 WEST 49TH STREET, NEW YORK, N.Y. 10019

TEL. 581-1500 TAPE 581-1511

OFFICE OF THE PRESIDENT

October 5, 1971

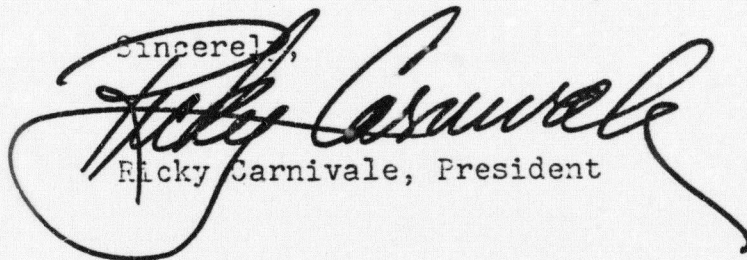
Cunningham & Kaming
Attorneys at Law
122 East 42nd Street
New York, NY 10017

Gentlemen:

Enclosed is a \$5000.00 payment towards legal expenses incurred. I ask you to bare with us in our economic strife against New York Telephone Company. A balance will be mailed in the near future.

Thanking you in advance for your understanding.

Sincerely,



Ricky Carnivale, President

RC:ps
opeiu/153

cc: Michael Cabanegro

USA 33s-475
(ED. 4-23-71)

GOVERNMENT'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

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A150

A.1

CUNNINGHAM & KAMING, P. C.

ATTORNEYS AT LAW
757 THIRD AVENUE
NEW YORK, N. Y. 10017
486-3080

PATRICK J. CUNNINGHAM
JOSEPH S. KAMING
MARC S. KRIEG

GOVERNMENT'S

EXHIBIT

U. S. DIST. COURT
S. D. OF N. Y.

November 11, 1972

46F ~~Id.~~

Honorable Michael Capanegro
136-51 37th Avenue
Flushing, New York

Dear Cappy:

We would appreciate this bill being paid. It is over two years old. We have obviously been considerate of the problems of the Communication Workers of America in withholding pressing you on this. We would appreciate your consideration with a quick payment in the full amount.

Enclosed is an opinion by Justice DiFede where we were successful in vacating an Arbitration Award against Thomas Ganser and Harold Farrar. We pursued this matter conscientiously and have been successful.

Payment now will be greatly appreciated.

Sincerely,



Joseph S. Kaming

JSK:bs
Enclosures

CUNNINGHAM & KAMING, P. C.

ATTORNEYS AT LAW
757 THIRD AVENUE
NEW YORK, N. Y. 10017

486-9080

PATRICK J. CUNNINGHAM
JOSEPH S. KAMING
MARC S. KRIEG

November 10, 1972

Mr. H. Howard Ostrin
1370 Avenue of the Americas
New York, New York 10019

Re: Arbitration Proceeding for Ferrar
and Ganser

Dear Mr. Ostrin:

Enclosed is the decision of Justice DiFede vacating the Arbitration Award against Thomas Ganser and Harold Farrar.

This decision is related to an arbitrator's opinion dated April 30, 1971, on the telephone strike of January 1971 and particularly an incident of January 20, 1971 involving an alleged attack against Granville, S.K. Waite. An order has been submitted to Judge DiFede vacating the award pursuant to the attached opinion. As perhaps you may recall, this matter was remanded by the Appellate Division to Special Term where, according to the decision attached, the Arbitration Award was vacated.

We will be glad to be of any assistance to you in obtaining the reinstatement of Mr. Ganser and Mr. Farrar.

However, we wanted to apprise you of this decision which the Telephone Company may appeal even though the Appellate Division, as we indicated, has already ruled on the sufficiency of the allegation.

I would appreciate your maintaining us advised of any actions you will now take.

Sincerely,

Joseph S. Kaming
Joseph S. Kaming

JSK:mfw
enclosure

A152

A.15

CUNNINGHAM & KAMING, P.C.

ATTORNEYS AT LAW
757 THIRD AVENUE
NEW YORK, N.Y. 10017
486-9080

PATRICK J. CUNNINGHAM
JOSEPH S. KAMING

September 14, 1972

Communication Workers of America
Local 1101
224 West 49th Street
New York, New York

PAST DUE
PLEASE REMIT

to

CUNNINGHAM & KAMING, P.C.

Per agreement of June and July, 1971
criminal defense of the following
18 defendants in the January, 1971
telephone strike:

Barnes, Shelby
Bragg, Edwin
Coticchio, Deminic
Davi, Richard
Decker, Larry
Derring, William
Devine, Frank
Farrar, Harold
Ganser, Thomas

Mancin, Dennis
Mollo, Joseph
O'Connor, Michael
Palmer, George
Pardoch, Rogers
Rose, Joshua
Robins, Raymond
Ryttenberg, Harry
Thoman, John

Through our efforts, charges were dismissed or
verdicts rendered for the defendants after trial for
15 of the 18 defendants - two defendant, Joshua Rose
and Edward Bragg pleaded guilty to violations and
Larry Decker avoided the jurisdiction of the courts. \$18,500.00

Authorized Supreme Court action to seek rein-
statement of defendants Thomas Ganser, William
Deering and Harold Farrar. Validity of action
recognized by Appellate Division. New York Law
Journal on May 10th, page 15.

2,250.00
\$20,750.00

This constitutes the total sums owing and due
to our firm regarding all of these matters and
pursuant to the agreements of June and July, 1971.

Less 10,000.00 paid
Total owing. \$10,750.00

A153

A.15

x

In the Matter of the Arbitration of
Certain Controversies Between

THOMAS GANSER, HAROLD FARRAR and
COMMUNICATIONS WORKERS OF AMERICA, AFL-
CIO,

as given of men who allegedly assaulted him. He testified.
Petitioners, INDEX NO. 16403/1971

-against-

NEW YORK TELEPHONE COMPANY and AMERICAN
ARBITRATION ASSOCIATION,

Respondents. and time some two months

DIFEDE, J.:

Application by petitioners to vacate an arbitration

award upholding the discharge of the individual petitioners by
respondent New York Telephone Company.

Petitioners, members of the Communication Workers of
America, AFL-CIO, were accused of being part of a group of men
who assaulted Granville, S. K. Waite, when he tried to cross a
picket line setup in front of the New York Telephone Company's
office. As a result of this occurrence, the petitioners were dis-
charged. Grievances were filed by the Union and the issues were
submitted to arbitration. Hearings were held on March 19 and
26, 1971. The arbitrator's report, rendered April 30, 1972,
sustained the respondents' discharge of the petitioners as being
proper while determining that the discharge of two others was
improper. Such findings were based solely upon the testimony
and identifications made by the complainant Waite.

Subsequently on May 12, 1972, assault charges in the
Criminal Court of the City of New York, New York County, were
dismissed against the petitioners. The complaining witness Waite
could not say definitely whether petitioner Farrar was with the
group of men who assaulted Waite.

The inconsistency of the testimony is enough to sus-
tain a finding that the rights of the parties have been prejudiced
by corruption, fraud, or misconduct in procuring the award.

second group of men who allegedly assaulted him. He testified, "I am not sure. I could not say." Based on such testimony the Criminal Court Judge dismissed the case against the petitioners.

There is a manifest difference between positively identifying Farrar at an arbitration hearing and then some two months later, at a Criminal Court trial, being unable to make such a positive identification and only replying, "I am not sure, I couldn't say."

Had the witness so testified at the arbitration hearing, the outcome may have been quite different as the arbitrator relied solely upon the testimony and identification made by the complainant, Waite. The arbitrator found that Waite erred in identifying Thoman, the third man accused of the assault, and therefore determined his discharge was not for proper cause. However, the arbitrator also was persuaded that there was no error in Waite's identification of Farrar and Ganser as he was persuaded "that Waite had no rational reason to fabricate such testimony". (Arbitrator's Opinion dated April 30, 1971, pages 6 & 7, Exhibit B of the Petition)

The whole basis for the arbitrator's decision was the credibility of Waite. Such inconsistent statements within a relatively short period of time certainly cast a shadow upon all of Waite's testimony and go directly to Waite's credibility, the sole basis for the arbitrator's decision.

Under these circumstances and in all fairness and justice the Court cannot allow an arbitration award based solely on such testimony to stand.

The inconsistency of the testimony is enough to sustain a finding that the rights of the parties have been prejudiced by corruption, fraud, or misconduct in procuring the award pursuant to CPLR 7511(b)(1). This is applicable to conduct by a

The Matter of the Arbitration of
the Contractual Dispute between

the United Brotherhood of Carpenters and
Joiners of America, AFL-CIO,

party, arbitrator or third person.

In light of all of the above and since the testimony
of the principal witness Waite is tainted, the interests of justice
would best be served by vacating such award.

Accordingly, the petition to vacate the arbitration
award upholding the discharge of the individual petitioners is
granted.

Application for petitioners to vacate an arbitration
Settle order.

Application for petitioners to vacate an arbitration
Settle order.
Dated: October 3
~~September~~ 11, 1972.

Petitioners, members of the Construction Workers of
America, AFL-CIO, were accused of being part of a plot of men
assaulted Granville, S. A. Walter, when he was J. S. C. on a
line setup in front of the New York Telephone Company's
office. As a result of this occurrence, the petitioners were dis-
charged. Grievances were filed by the Union and the issues were
referred to arbitration. Hearings were held on May 19 and
1971. The arbitrator's report, rendered April 12, 1972,
upheld the respondents' discharge of the petitioners on May 19
1971 while determining that the discharge of two others was
proper. Such findings were based solely upon the testimony
and justifications made by the complainant Waite.

Subsequently on May 17, 1972, assault charges in the
Criminal Court of the City of New York, New York County, were
dismissed against the petitioners. The complainant witness Waite
did not say definitely whether petitioner Farrer was with any

LAW OFFICES
OF
DAVID R. RUBIN

ANGEL CRUZ CRUZ
ASSOCIATE COUNSEL
PUERTO RICO

R.C.	☒
J.K.	☐
J.F.	☐

RECEIVED

SEP 28 1971

BY LOCAL 1101

FLATBUSH OFFICE
502 FLATBUSH AVENUE
BROOKLYN, NEW YORK 11225
BUCKMINSTER 2-6666
2-6667

LONG ISLAND OFFICE
160 GRIST MILL LANE
GREAT NECK, NEW YORK

September 27, 1971

Mr. Ricky Carnevale
c/o Local 1101 CWA
224 West 49th Street
New York, New York

to

DAVID R. RUBIN, DR.

Re: People vs. Carmine Gallo

Representation at arraignment at Weekend
Court on September 26, 1971
Arrangement for Release of defendant-----\$200.00

Note: Further Court proceedings have been
adjourned to October 18, 1971 at 9:30
a.m. at Criminal Court of Queens County,
Part 1A.

cc: Mr. Carmine Gallo
741 East 58th Street
Brooklyn, New York

USA 33b-475
(ED. 4-23-71)

GOVERNMENT'S

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

47A

A15

A.

LAW OFFICES
OF
DAVID R. RUBIN

ANGEL CRUZ CRUZ
ASSOCIATE COUNSEL
PUERTO RICO

R.C.:	<u>A</u>
J.K.:	<u> </u>
J.F.:	<u> </u>

RECEIVED

SEP 28 1971

BY LOCAL 1101

FLATBUSH OFFICE
502 FLATBUSH AVENUE
BROOKLYN, NEW YORK 11225
BUCKMINSTER 2-6666
6667
LONG ISLAND OFFICE
160 GRIST MILL LANE
GREAT NECK, NEW YORK

September 27, 1971

Mr. Ricky Carnevale
c/o Local 1101 CWA
224 West 49th Street
New York, New York

Not to be paid to

DAVID R. RUBIN, DR.

People vs. Lonnie Goodman

Representation at arraignment at Weekend
Court on September 26, 1971

Arrangements for Release of Defendant-----\$200.00

Note: Further Court proceedings have been
adjourned to October 18, 1971 at 9:30
a.m. at Criminal Court of Queens County,
Part 1A.

122-2
MAY 1 - 1976

U. S. GRAND JURY
S. D. N. Y.

cc: Mr. Lonnie Goodman
2509 East 64th Street
Brooklyn, New York

USA 33a-475
(ED. 4-23-71)

GOVERNMENT'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

47B

[Signature]

Criminal Court of the City of New York

Part _____, County of _____

THE PEOPLE OF THE STATE OF NEW YORK

ON THE COMPLAINT OF

PEOPLE

vs.

JOHN TEENIEY

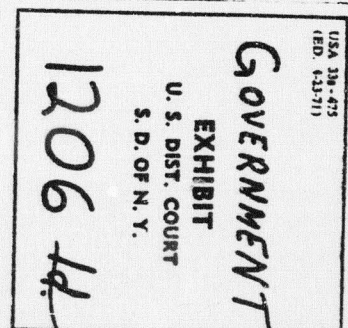
To THE CLERK.

Sir:

You are hereby notified that I have been retained by the defendant
 or by COMMUNICATIONS WORKER of 224 W 40th NYC
Name of Person LOCAL 1101 Address
 in the above entitled action.

Dated JAN 26 19 72MICHAEL J. CAPANECA
Attorney for Defendant (Print Name)Address 136 E 127th AveBy [Signature]

(Sign)

FLUSHING NYTelephone No. HI -

A.159

Govt

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

1908 *td.*

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

PEOPLE OF THE STATE OF NEW YORK,
- against -

ROBERT POMPOSELLO, Defendant.

STATE OF NEW YORK)
COUNTY OF QUEENS } SS:

MICHAEL J. CAPANEGRO, being duly sworn deposes and says:
That he is the attorney for the defendant herein and as such is
fully familiar with the facts and circumstances surrounding the action

That deponent is Chief Counsel to the Communication
Workers of America, Local 1101 and this Union has approximately
18,000 members and has been on strike for seven months.

That in the course of the strike there have been
numerous criminal charges involving both the Union and the Telephone
Company and deponent has made appearances on all of them.

That deponent has been on trial every day for the past
six weeks and will be so engaged for the next three weeks.

That on the 2nd day of February, deponent will be engaged
on two matter, Criminal Court, New York County, in re People vs.
Whyte, Part MP-1, on trial; and in the matter of People vs John Doe,
in Criminal Court, Kings County in reference to a Complaint against
the Telephone Company.

That the above two matters have been adjourned and are
on for the second time.

That the above captioned case is on for the first time.

WHEREFORE, your deponent respectfully requests for an
adjournment to a day convenient to this court, but subsequent to
March 8th, 1972.

SWORN TO BEFORE ME THIS

1st day of February, 1972.

William Hightman
WILLIAM HIGHTMAN
NOTARY PUBLIC, State of New York
No. 41-1824060 Qual. in Queens Co.
Term Expires March 30, 1972

Michael J. Capanegro
Michael J. Capanegro

A. 160

— The defendant, upon being released on his own recognizance, was directed
by the Court pursuant to section 510.40 of the CPL.

(4)

515

1 mcds
2 United States of America

3 -vs-

76 Cr. 914

4 Michael Capanegro

5

6

New York, New York
June 23, 1977-- 10:15 a.m.

7

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Before: Hon. Thomas P. Griesa, D.J.

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tkl

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(Trial resumed)

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MR. BUCHWALD: Your Honor, I have what we are
going to offer as Exhibit 48, the CWA Local 1101 Charter,
but I believe that the defense will stipulate that the Com-
munications Workers of America International and Local 1101
thereof are labor organizations within the meaning of
Section 402 of Title 29.

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MR. COHN: No problem.

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THE COURT: Before we start, I wanted to make
sure I didn't mislead anybody, particularly the defendant
and his counsel, by any remarks I made yesterday. I am
interested in avoiding repetition and having the trial as
efficiently as we can do it, and that was the purpose of my
remark. But I thought after the day was over that maybe I
indicated that I somehow had a light view of the case, and
I must say that nothing is further from the truth. I regard

2 the case seriously and I'm sure all counsel do, and I want
3 to make them understand that whatever amount of time is
4 necessary to have it properly disposed of will be g' to it.

5 I have heard nothing which would convince me
6 that my ruling on the motion should be changed, although I
7 certainly, obviously, would be receptive to argument at the
8 end of the government's case or any other appropriate time.
9 But I would just like to say this: At the present time,
10 because the issues here are not quite the issues in the normal
11 criminal case -- they have some unique aspects in my mind
12 and some difficult aspects, and I think this would help both
13 sides in their further work in this case and that is if I
14 just mention these things to you now, and I do it really to
15 ask you to think about them in the further course of the case
16 and not to argue them now. That isn't the point.

17 I am having some difficulty formulating in my
18 mind the standard which should apply on the questions of the
19 conduct of the defendant and the question of the state of
20 mind, the intent factor, and I keep thinking about that and
21 weighing the proof as it comes in.

22 Let me just try to pose something that may
23 help you understand the issues as they are shaping up in my
24 mind. Maybe the best way I could do it is to pose a couple
25 of hypothets.

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2 Let us supposed that you have a lawyer who
3 renders services of the kind that were rendered here and
4 he submits a bill to the union or to the Legal Defense Fund.
5 He charges X dollars, let us say a thousand dollars, and he
6 has only worked two hours.

7 Now, that may be a lot higher hourly charge
8 and, you know, that is done by a lot of the firms, time, etc.,
9 etc. Maybe we could disagree with his evaluation of the
10 services, but if he in good faith values his services at a
11 thousand dollars and submits that bill, regardless of whether
12 somebody could disagree with it, I would think that that would
13 not be a crime.

14 But the key word that I have tried to express
15 there is a good faith evaluation of his services. Maybe it
16 is a very high value. Anyway, let's suppose that it is simply
17 an example of some negligence. Maybe the bookkeeper makes
18 an error in getting up whatever information is gotten up for
19 the bill. Maybe the attorney makes an error. So it is a
20 negligence situation. He submits a bill that is erroneous
21 through negligence.

22 Well, I assume that again is not a crime.

23 Now, at the other end of the spectrum, if he
24 submits a bill for something that he knows he hasn't per-
25 formed any work whatever on. It is a pure, hundred percent

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2 fabrication. Then that is the other end of the spectrum and
3 if he knows it is a fabrication, well, I guess that I think
4 that could be criminal conduct within the meaning of the
5 statute.

6 I know that you have your views, Mr. Cohn, as
7 to the application of the statute even in that situation.
8 I'm trying to put that aside for the moment. That is another
9 issue.

10 MR. COHN: Sure.

11 THE COURT: But I'm just trying to deal with
12 the type of conduct and the state of mind.

13 MR. COHN: I understand.

14 THE COURT: Let's suppose we have a situation
15 where we have something that maybe doesn't fall off within
16 either or any of the three hypothets I have given you, where
17 service is rendered, where a bill is submitted, and what I'm
18 trying to grope for is I'm in the middle. I don't quite
19 know what to say. I think that maybe the test is going to
20 be even where a service is rendered where it isn't really
21 my third hypothet, but I must say that I certainly conceive
22 that point is reached where there are factors which would
23 make it into a crime within the statute if the bill is
24 intentionally padded, exaggerated, so that it is clear that
25 the amount is intentionally excessive beyond any reasonable

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2 value of the services and if it is intended to be so.

3 Now, that is a tough thing to prove, and I
4 think that the type of claims we have here fall in that
5 category and it is difficult to articulate exactly how that
6 gets proved, but I just am trying to go through this exercise
7 to illustrate to you what I think precisely are the issues
8 here, and it seems to me the question is going to shape up --
9 there is not going to be any answer to it until the proof
10 is all in -- and that is does the circumstantial evidence
11 and the direct evidence -- but the government's case is going
12 to be largely a circumstantial evidence case -- does the
13 circumstantial evidence lead to an inference beyond a reason-
14 able doubt, proof beyond a reasonable doubt that the charges
15 were so excessive that they were simply not charges for legal
16 work. They were padded, taking money to which he was not
17 entitled, and that he knew that and what are the circumstance

18 I want to say one thing further: I think that
19 as I view the evidence now, one very important set or type
20 of evidence will be those bills. In other words, if I am
21 trying to determine whether the government has proven that
22 the wrongful conduct of the kind that I have just talked
23 about, really a defrauding of the union, a taking of money
24 to which he knew he was not entitled, then what is the
25 evidence in that. I regard the bills as crucial, as if some-

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1 mcds

2 body puts down a list of services and an amount and they
3 have -- if, and I say if because I don't know yet, I haven't
4 heard the whole case, but if there is a consistent pattern
5 under which the defendant does not perform the services
6 stated in those bills, then that could very well be a very
7 important element of circumstantial evidence in the kind of
8 case that we are talking about.

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1 I have said this really to alert you to what
2 are the issues in my mind. I repeat, I haven't really
3 come close -- I couldn't come close to deciding the case
4 because I have not heard it all. That's where we stand.
5

6 MR. COHN: I assume your Honor doesn't want
7 a response.

8 THE COURT: No. I want to alert you. As far
9 as how many counts, I have no power to throw out counts,
10 the Court of Appeals has made that clear. I think it has
11 to be a matter of your judgment as to what you think in
12 the public interest and in the interest of presenting the
13 government's case has to be put on. You know your case
14 a lot better than I do.

15 All I can say is that -- I still say this quite
16 seriously, that I don't think the statute has a minimum
17 amount that has to be taken before it is a crime. I really
18 don't think it makes any difference whether you prove 12
19 incidents or 24, as far as proving your case.

20 In other words, if you are going to simply
21 present more of the same kind of thing, then as a matter
22 of strict logic, and I think realistically, if you have
23 won your case, if you have a winning case on 12 instances,
24 you are not going to have any more of a winning case if
25 you bring in another 12. If you have lost your case -- if

THE WITNESS: Larry Bittman, your Honor.

Q He was one of the directors of the Defense Fund?

A Yes, and he was a -- he had a position in the

union also. Chief steward -- I don't know.

THE COURT: Again, what did you say to him?

THE WITNESS: I said, your Honor, that I would

sit down with anyone, because they were making these charges,

coming after me, and I said I would sit down with anyone

who would want to and go over every case that I have and

show you that my fees were reasonable and that if there

was -- which I felt at the time there wasn't -- any area

for adjustment, I would adjust with them and pay it.

But, nobody ever came to me. Nobody ever

said -- sent me letters or said, "Let's sit down."

THE COURT: I don't want to interrupt or bog

this thing down, but I am extremely interested in this last

piece of testimony. I'd just like to ask the Government

right now, in other words, if you are charging somebody

with a crime such as is alleged here, which really is that,

to use the vernacular, a professional man padded his bills

and knowingly did so and made descriptions of services in

the bills which were not correct and included amounts of

money to which he knowingly was not entitled, that's your

charge.

1 I've got to wrestle with the proposition as to
2 whether the Government has proved that beyond a reasonable
3 doubt. It is of very great importance to the public, it
4 is of very grave importance to this defendant as to which
5 way it goes.
6

7 Is this a situation where there was a real
8 criminal intent of this kind or fraudulent intent, whatever
9 you want to say, or whether it was a matter of sloppy
10 practices, negligence, misestimation, or that kind of
11 thing?

12 If it really is a case where there was mis-
13 accounting, misestimation, sloppy billing practices, if
14 that's the kind of thing that went on, I don't think the
15 defendant concedes even that, but for the purpose of our
16 discussion, we all know that that isn't -- we are trying
17 to distinguish a criminal case from some other kind of case,
18 whatever the other kind of case may be.

19 If it is a matter of acquiring money that you
20 are not entitled to but you do it through sloppiness,
21 negligence, et cetera, then the remedy is to pay it back.
22 If there is any remedy at all, it is to pay it back. Have
23 an accounting.

24 The criminal remedy is vastly more grievous to
25 this man than any accounting procedure, or anything like

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Capanegro - direct

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2 that in the world. So it is a very serious matter to all
3 of us which way it goes. I am extremely interested to
4 know if there were any proceedings or any consideration
5 given to having him account or pay back, anything like that.
6 whether there was that offer. I don't mean to interrupt
7 the testimony, but, you know, in a day or so we have to
8 decide which way it goes in this case, what you have proved.
9 I think we have got to figure out what the right remedy
10 is or should have been.

11 MR. BUCHWALD: I understand what your Honor is
12 saying, and I don't know if it is directly related to one
13 of the questions your Honor asked at the beginning of the
14 trial with respect to either Labor Department procedures
15 for accountings of money -- I didn't know the answer at that
16 point. There are not. There are 501(b) and (c) --
17 excuse me, 501(a) and (b) which give civil suit remedies
18 and there was -- I don't know if Mr. Cohn is getting into
19 this or not --
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2 THE COURT: I know there was a civil suit before
3 Judge Frankel and it was settled for \$5,000. Maybe that's
4 the end of any question about accounting. But -- I suppose
5 it is. I just emphasize, it is extremely important to me
6 to know what about this offer to the Defense Fund -- I don't
7 know any better place to make the offer, if he made it --

8 MR. BUCHWALD: Mr. Bittman is Local 1101.
9 He was the Local 1101 committeeman in charge of administering
10 things, the Defense Fund of Local 1101.

11 THE COURT: Look there were people from the
12 International. We had that vice-president in here. If the
13 International thought that he had padded his bills and had
14 charged money for services he didn't render, etc., etc., some-
15 body in that union would have been high enough and it seems
16 to me interested enough in the proprieties of the union to
17 say, "Okay, let's have an accounting."

18 MR. BUCHWALD: Your Honor, they did. Mr. Bahr
19 notified the Labor Department after speaking to Mr. Ostrin
20 and on instructions from Mr. Beirne and the International
21 notified the Local and the Local started the lawsuit.

22 MR. COHN: That's just where I was going right
23 now.

24 THE COURT: If we have got a situation where
25 he has extended an invitation to have an accounting and to

2 make good any amounts that he may not have been entitled to,
3 if that really happened and he was really sincere about that,
4 it would be quite a tragedy if somehow the invitation was
5 just not accepted and we end up years later with a criminal
6 case.

7 MR. BUCHWALD: It would be a tragedy if the
8 initial thing was negligence.

9 THE COURT: What?

10 MR. BUCHWALD: It would be a tragedy if the
11 initial -- and I use the word "padding" not as an advocate,
12 but if the initial inflation of legal fees was negligent --
13 but it would not be a tragedy if the initial padding of legal
14 fees was fraudulent and the man now felt that he had been
15 caught and he goes to Mr. Bittman, who doesn't have authority
16 over the Defense Fund, and says, "Well, maybe we can work
17 something out," and pays Mr. Carnivale \$5,000 and loans
18 \$5,000 to Mr. Lanaro and then fights a civil suit and says,
19 "Gee, this isn't a criminal matter, it might have been reason-
20 ableness of legal fees" -- I would suggest to your Honor,
21 it is a function of how we view the initial set of facts.

22 If the conclusion is reached that it is
23 negligence of sloppy practice, then a refusal to work it out
24 just civilly and not criminally I think would be poor. If
25 the conclusion is that the original facts are fraud and crime

2 and done with criminal intent, then not simply settling
3 it on the civil level with an accounting is viewed in a
4 different way.

5 I think it is probably in the last analysis
6 something that turns on what your Honor's view of the
7 essential facts are.

8 THE COURT: I am sure I am getting several
9 things kind of rolled up together here, and I guess just
10 speaking purely logically, the relevance of this would go to
11 his state of mind. In other words, if I believed he came
12 forward with a good faith offer to negotiate and clear up
13 any excesses and I believed that this was really a responsible
14 offer, not simply a coverup, etc., then that would go to my
15 view of his state of mind originally.

16 So, speaking logically -- I still want to know,
17 and, again, I don't want to bog us down, but just in general,
18 what is your contention? Do you -- still, somebody comes in
19 and invites an accounting.

20 Was the invitation accepted or wasn't it or
21 do you say it wasn't made to the right person or do you say
22 he didn't really invite it?

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MR. BUCHWALD: There was a suit for an accounting and it was fought. Finally there was a settlement.

THE COURT: People don't like lawsuits sometimes. How about just sitting down? Did anybody from the Defense Fund, either the local or the international say, "All right, Mr. Capanegro, let's -- we will tell you wherein we think you erred. Will you pay us back X thousand dollars?"

Did anybody do that?

THE WITNESS: No, your Honor.

MR. BUCHWALD: Did anybody do that from the Defense Fund? The Defense Fund, including O'Donnell & Schwartz, knew of only four of these incidents. They had interviewed four of the people --

THE COURT: They had all the campaign literature. They just didn't bother to follow it?

MR. BUCHWALD: That's the total amounts. The campaign literature didn't say Mr. Capanegro didn't perform these services. The campaign literature was directed to, "Gee, that's a lot of money for these services, as claimed in the bills. What we have here, part of the argument to your Honor is that the bills themselves are false. The whole business --

THE COURT: All right. I tell you what, to

2 be perfectly frank with you, it doesn't take a genius and
3 it doesn't take a lot of time to compare the bills with
4 the facts. I have got to say to Mr. Cohn and Mr. Capanegro
5 that there is a lot in the bills that doesn't correspond
6 with the facts.

7 If somebody had gone into that -- and I am not
8 saying that -- you know, I am not trying to pronounce on the
9 case, I am just trying to discuss the issues so you know
10 and Mr. Cohn knows what the issues are in my mind and the
11 Government knows, because it is very serious to everybody
12 concerned.

13 Now, my point is that if you have got some
14 problem raised in the campaign very shortly after the
15 events, depending on the degree of -- you know, depending
16 on a lot of things in the very, very civilized situation,
17 one might have thought you could say, "All right, Mr.
18 Capanegro, we question the validity of your bills. Would
19 you -- we have these bills and they are for a lot of
20 money and would you like to show us your files and explain
21 to us what you did to deserve \$2000 here and \$1850 there?"

22 If indeed he offered to anybody to sit down
23 with him, why, I think that you might say, "Okay, that's
24 a pretty good time to handle it," and maybe something could
25 have come of that. This is not like going into the

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file of Paul, Weiss, on an antitrust case. There are very simple files. The facts are clear-cut.

Either there was a trial or there wasn't. You could look and compare. It is a long, long way of asking you again, as I am interested in the question of whether anything was done at the time to check this out -- after all, the International is supposed to, I assume, have some supervisory responsibility, and the fellows operating this Defense Fund felt that it was their money that they were paying to the union. I assume that they had some desire to have it administered properly.

It is really almost unbelievable to me that somebody in higher authority in the Communications Workers Union didn't try to take care of their money and say, "Mr. Capanegro, why don't you account to us and tell us what you did," and then maybe something could have been done at that time. That's not the same as some -- who filed the lawsuit before Judge Frankel?

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Capanegro

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2 MR. BUCHWALD: Local 1101.
3 THE COURT: Some aggrieved people?
4 MR. BUCHWALD: No, that firm, O'Donnell &
5 Schwartz, Local 1101, and the International -- the International
6 have the audit by Main, Lafrantz. Main, Lafrantz, the auditors
7 find the bills which are the backup for the \$113,000 or
8 \$117,000 in legal fees. The question is, are there bills to
9 substantiate the checks?
10 The debate between the International and the
11 Local is simply, is there advance approval? If there is
12 advance approval, then it is properly spent from the Inter-
13 national.
14 THE COURT: That is stupid. I mean, the real
15 point, when you get down to it, and it may be way beyond my
16 purview, is this: Is this a case where a criminal remedy
17 is the right remedy or some lesser remedy, because, after
18 all, you have got a man who has practiced law. The criminal
19 remedy if he is convicted will be tantamount to taking him
20 out of the practice of law unless the Appellate Division,
21 you know, does something differently than they have done in
22 the past --
23 MR. COHN: It is automatic now, your Honor.
24 THE COURT: Yes. I think it is extremely hard
25 to get reinstated. The point is, again, I am not the U.S.

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2 Attorney's office, and so I don't have the job of deciding
3 as a matter of policy whether to prosecute, and I don't want
4 to get into that, because I am getting into it and yet I am
5 not, but I want to be very careful that I don't really,
6 you know, get too far, so I will try to draw my fine lines.

7 But, again, it surprises me that with this
8 problem staring people in the face that in the fall of 1972,
9 it surprises me that somebody, in particularly if they had an
10 auditing firm come in, if they did not make a demand on
11 Mr. Capanegro for what I will loosely call an accounting,
12 which means not just to see whether he got prior approval,
13 or whatever you call that -- that is not much of an issue.
14 The question is to find out -- get his files, find out what
15 he did, find out what happened in the case, find out what we
16 have been talking about here.

17 It doesn't take the works of a genius to get
18 to this. If he had refused, if he had done something to
19 deceive or mislead the people trying to do the accounting,
20 well, that would be another matter.

21 I am doing all the talking, but I still haven't
22 received any indication there was an attempt by the
23 authorities who supervised the Defense Fund to take
24 Mr. Capanegro's bills and go to Mr. Capanegro and request his
25 cooperation in explaining the basis for the bills, asking

2 for his files, etc. I don't even hear that there was any
3 such request, and I don't -- again, I keep saying I don't
4 know what relevance it has ultimately to me, but it simply
5 surprises me.

6 MR. BUCHWALD: I don't know whether your Honor
7 wants me to respond or not. In my judgment, there is evidence
8 in the record and I am going to limit myself to the evidence
9 in the record now in responding to it, to show that the
10 International did in fact take a lot of action. Mr. Bahr
11 testified that he spoke to Mr. Ostrin who once upon a time
12 had had an opportunity to be looking at these bills which
13 were handed over to him by Mr. Carnivale as indications of
14 something that happened in connection with all the cases for
15 the preparation of the disparate treatment of the defense,
16 the arbitration.

17 Bahr spoke to Ostrin. Bahr spoke to then
18 president Beirne. Bahr was instructed to notify the Labor
19 Department. Bahr gave the results of the auditing to Local
20 1101. There has not been testimony, but I think it is
21 conceded or it will go in, about a lawsuit thereafter starting

22 In the context of 1101 at that point and the
23 campaign literature, two sides are calling each other all
24 kinds of names at that point. When Mr. Cohn contends that --

25 THE COURT: Somehow you don't answer me. I

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Capanegro - direct

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want a -- I will cease this in about three minutes, but I want to know, before we get the lawsuits by opposing factions, there is a psychological arena that gets things very difficult. Before we get to a criminal case, did the people who were supposedly holding some responsibility over that Defense Fund and who should have been alerted, did they do what I have talked about or didn't they, and did they try to go into the issues with Mr. Capanegro as to whether the amounts that he billed were deserved or not?

MR. BUCHWALD: It really depends who you are talking about, your Honor. The International's position was local. Whether the work was done or not, there was no advance authorization. So, "Local, you owe us \$113,000, we suggest that you iron this out with your former president and former counsel."

The Local's position was that they then started a lawsuit. They did know about four or five instances where in addition to thinking that the fees were too high, they thought the work wasn't done.

They were not privy to the grand jury investigation, they didn't know about the other forty-two or forty-seven instances.. For them to take a deposition, for example, in a matter involving a \$1,800 bill, as far as the work of the deposition vis-a-vis the obtaining the difference between

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\$1,800 and \$600, or whatever final figures might have come
out, didn't pay.

THE COURT: Didn't what?

MR. BUCHWALD: Didn't pay.

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Capanegro - direct

1 THE COURT: So it all had to be left to the
2 criminal process to sort it out?
3

4 MR. BUCHWALD: For the grand jury to investigate,
5 to make an initial determination as to whether there was
6 probable cause to believe that there was criminal intent,
7 based on all of the facts and the pattern of billings.
8 That determination was made that there was probable cause.

9 Your Honor, we will argue, based on all of the
10 facts here, that that pattern is so clear and the other
11 evidence that goes with the pattern, including the various
12 payments and evidence which your Honor has yet to hear, is
13 so clear that in fact your Honor will be able to determine
14 beyond a reasonable doubt that the initial obtaining of
15 the moneys and keeping of the moneys, \$113,500, over four
16 and a half months, was criminal and that there was the
17 requisite criminal intent.

18 THE COURT: We haven't accomplished much in the
19 last twenty minutes. Do you want to try to finish your
20 direct?

21 MR. COHN: I think it would help me now if we
22 went over to the morning. I could finish in pretty good
23 order. I could pull everything together.

24 For your Honor's guidance, after Mr. Capanegro,
25 I have just two or three other very short witnesses, so

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Capanegro - direct

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2 I would propose to rest within twenty minutes after Mr.
3 Buchwald concludes his cross-examination. I am not going
4 to slaughter you with 500 character witnesses.

5 THE COURT: I am just wondering if there is--
6 we can certainly conclude now. I just wonder if I have
7 got any questions.

8 MR. COHN: If you do, please, your Honor.

9 THE COURT: There is another thing. If my
10 memory of the record is correct, the Government during its
11 case at various times thought to present material about
12 other cases handled by Mr. Capanegro, aside from the cases
13 or in addition to the cases referred to in the 24 counts.

14 Right, Mr. Buchwald?

15 MR. BUCHWALD: Yes, your Honor.

16 THE COURT: Now, if I recall correctly, the
17 defense consistently objected to receiving any such -- any
18 information about these other cases; is that right?

19 MR. COHN: Yes, your Honor.

20 THE COURT: Again, I am probably getting out of
21 my function, but I am really interested not in seeing some
22 kind of an adversary battle here, but we are all trying
23 to achieve justice here, and I would just like to raise
24 with you for both sides' consideration this question.
25 Since it is a non-jury case, we are a little more flexible

1 that we might otherwise be.

2 I wonder whether it would not be of help to
3 have information about the other cases. It could prolong
4 the trial, but I am getting the feeling that perhaps I am
5 seeing this out of context. I haven't the faintest idea
6 who would be helped or would be hurt by any discussion of
7 the other cases. I don't know.

8 It could be that if -- suppose there were
9 30 other cases and let us suppose that by going to them the
10 evidence showed that these were other cases where there was
11 a lot more work done than in the 24 cases and that the bills
12 without saying -- I am not trying to really make a finding
13 now, but these -- one way or the other on these bills,
14 because I haven't heard all the evidence, but let's just
15 suppose for the purposes of discussion that I would find
16 that these bills were inflated if taken by themselves.

17 Let us suppose that there were 35 or 40 other
18 cases where -- and let's suppose they were mixed in chrono-
19 logically, and all, and let's suppose that in those 35 or
20 40 other cases I would feel differently, I would feel that
21 the bills were -- more service performed and the bills were
22 more reasonable.

23 I am saying all this hypothetically, I hope
24 you understand, because I haven't made any decision about
25

1 the 24 and I haven't heard anything on the other cases.
2
3 I hope you get my point.

4 It seems to me that I might, depending on what
5 the facts are, have a more realistic and more complete
6 view of what this man did if I had the whole picture. It
7 might be helpful to the defendant. On the other hand,
8 depending on the facts, it might be very helpful to the
9 Government if there were cases in which -- if there were
10 more cases that the Government could contend there was more
11 of the same kind of thing you are complaining about here.

12 I don't know, but I ask both of you to consider
13 just in general this question of whether it would not be
14 helpful to have the entire context. I would be willing
15 to do anything as far as procedure to do that, if it is
16 going to be productive. So you consider that overnight.
17 I certainly instinctively wanted to limit the case to the
18 24th. It took quite a bit of time and a lot of witnesses,
19 which I got somewhat impatient with, to even cover the 24.

20 I don't relish the idea of going beyond that.
21 It doesn't really make any difference what I relish, but
22 if we have a situation where -- what I am after is to get
23 a realistic view of the facts. If the realistic view
24 results in a proof beyond a reasonable doubt of guilt,
25 that's going to be the verdict. If it doesn't, then the

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Capanegro - direct

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verdict will be the other way.

But I really am concerned here about having a decision or reach a verdict on some kind of an unrealistic basis. You please think about that overnight.

MR. BUCHWALD: If I might just propose something for Mr. Cohn to consider, I think he knows that many of these other people are under subpoena, but perhaps we could work out something where we offer the other legal files and the other court papers pertaining to the other cases and simply read into the record the -- what the court papers indicate as far as the appearances which were or were not made or by which attorneys and have Mr. Capanegro's legal file, and then in those specific places where there may be some dispute as to what the facts are, either because the court papers are unclear or perhaps Mr. Capanegro's legal file is unclear, to call those particular witnesses. We do have umpty-ump other people under subpoena.

THE COURT: This is a matter of judgment. I don't know the answer. There is no utility in just going on and on with a lot of cumulative proof. We all know that. On the other hand, it has occurred to me, I don't know quite why the Government picked 24.

I want to conclude with this remark. A repetition of the same thing is not necessary for the

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2 Government. On the other hand, if there are facts favor-
3 able to the defendant in connection with the other material
4 and if this would put the situation in context as to this
5 defendant and be in the defendant's favor, I am not certainly
6 trying the case for the defendant, but I do very much want
7 to have that before I would reach a verdict.

8 Everything I say is "if", because I haven't the
9 foggiest idea of what is in that material. Please consider
10 it overnight and you can do anything procedurally that
11 will further the proper disposition of the case. Okay.

12 (Court adjourned.)
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MR. COHN: Absolutely.

THE COURT: I have assumed that since you put on the witnesses as part of your case to testify as to what they said, and indeed in a great many cases the testimony turned out to involve less than what is literally described in the bill -- I have got that -- I assume that you are not putting on Mr. Capanegro to challenge your previous case.

MR. BUCHWALD: No.

THE COURT: And, indeed, I think those things are just not at issue. Going to the next step, the issue in my mind -- there are several issues which would involve the personal knowledge of Mr. Capanegro, and one would be exactly what additional services he did on the various cases of the kind which Mr. Cohn covered generally in his direct.

In other words, did he indeed confer with DA's, did he indeed spend time talking to Union officials and advising them, or anything like that, did he indeed talk to Telephone Company people.

I don't know how much detail it is useful to go into on things like that, but it is certainly a valid issue and it is unsettled in my mind the exact extent of that. It could in fact bear very directly on our problem. So, what I am trying to get at is, I guess there does reach a point where a lot of minute detail -- we could really go on. There

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2 were a lot of cases, a lot of events, and trying to pin down
3 each little detail, we could spend a tremendous amount of
4 time. I don't know how to indicate to you anything except
5 that I think we have got to begin to concentrate on the very
6 main things. I know that isn't much of a helpful statement
7 to you, but at least you can assume, it seems to me, almost
8 as a given in the case that the basic testimony of your
9 witnesses really isn't contradicted.

10 So it really is these other things on which his
11 knowledge is the sole knowledge that he has got to tell us
12 about. If that is any help to you, I hope that -- you know,
13 we are coming back here tomorrow, let's try to go through
14 these -- if he is going to get convicted, it is not going to
15 be on picayune things. I have got to tell you, he is only
16 going to get convicted if you can show that there is really
17 what I will just crudely call a big difference, a salient,
18 glaring difference, between what he billed both in amount
19 and description and what he did.

20 If you have got a bill for \$1,000 where he
21 describes 10 different activities and all he did was have a
22 five-minute phone conversation with somebody where there was
23 never a real retainer, never a charge, that's the kind of
24 thing that I will tell everybody right now I would consider a
25 big difference.

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2 I am not saying -- you know, I am not trying to
3 hand down a verdict, but I am trying to illustrate what
4 I mean. If we get into a situation where we are really
5 quibbling, where he did go to Court and the only discrepancy
6 ends up being the question did he spend four hours versus
7 three hours, some kind of thing like that, that's not it. It
8 doesn't make any difference to me. He is just not going to get
9 convicted for that kind of a difference.

10 So try to go through your material, see wherein
11 there are these kind of major things that you want to present
12 further material on through his cross examination, and if you
13 want to try to negate the idea of these other services, the
14 kind Mr. Cohn brought out, anything like that, that's fine.

15 But let's make as much progress as we can tomorrow
16 You think you can complete -- when do you think you will com-
17 plete your cross?

18 MR. BUCHWALD: I would think in the morning.

19 THE COURT: That's perfectly fine.

20 MR. COHN: It is perfectly fine, your Honor, but
21 there is not a prayer.

22 THE COURT: What?

23 MR. COHN: I say it would be perfectly fine, but
24 I am sure there is not a prayer of Mr. Buchwald finishing
25 in the morning.

THE COURT: On a reasonable doubt standard I would question whether I could find that the language in the bill was incorrect. And I'm really left with the argument that the \$1,000 is out of line with what he did, his lack of follow-up and so forth, but here is my problem, if you don't have a clearly fraudulent and false description of work, you have got the bill sent out on January 7th, he doesn't send any further bill out. He evaluates his services as of January 7th, and it is \$1,000.

Now, I don't have any evidence, it seems to me, from the government or from any other source which would indicate that no lawyer could value even that rather modest amount of services at \$1,000. Where is it in evidence in this record to tell me that an evaluation of \$1,000 is something that no lawyer could do, and would be a claim?

MR. BUCHWALD: If I could address myself to two aspects, your Honor.

THE COURT: I suppose you could have an expert come in and testify, but I don't have it.

MR. BUCHWALD: Your Honor, in the counts in the indictment, and I think they go to the spectrum of different situations, and we would stand by and we believe

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MR. BUCHWALD: A violation.

THE COURT: All right. Now, Mr. Capanegro has testified, he testified this morning and he testified earlier on cross and he articulated the theory that he placed a value on his services according to the crime, and not that a violation is, you know, the most serious crime but the point was that even conviction of a violation subjected people to being fired from the telephone company, and his theory on his billing as he testified was that merely for getting someone off of a crime it is a valuable service and he would say worth \$1,375.

Now, can I say beyond a reasonable doubt that that is not so? It is not like the cases where he did not perform a service. This was, it is not like the cases where he wasn't the lawyer in court at the time of the disposition. He was in court. He did achieve the disposition and can you say beyond a reasonable doubt that he shouldn't get his 1,375?

Now, the description of the bill I would agree with you is a problem, but I'm not sure that -- again, the reasonable doubt standard is what we have to apply.

MR. BUCHWALD: We submit, your Honor --

THE COURT: And the real question under the statute is whether money was taken which he didn't

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deserve. Now, evidence of that may be falsification of the bill, but ultimately the question is whether the money was taken which he was clearly not entitled to.

MR. BUCHWALD: Yes, your Honor, with a foot note on the last thing, I don't think that that's directed particularly to Cassidy, we would submit or wrongfully retained we believe would be proper.

THE COURT: Either.

MR. BUCHWALD: I think what your Honor says concerning Cassidy that problem applies as well to a number of counts --

THE COURT: It does.

MR. BUCHWALD: -- where Mr. Capanegro did make some appearance or had some conference and the case was disposed of.

THE COURT: A result.

MR. BUCHWALD: A result, and I divided them up in two ways and I think it is less difficult as a problem area in situations such as these where the bill itself clearly overstates the work performed, where the bill is after the fact as is the case for example, with Cassidy, Toomey, Neri Wallen and Suda, as opposed to the situation with Califra and Block and some others where it is an infuturo.

THE COURT: Califra is another case, \$1,550.

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2 There may be a problem with the description of the services
3 but he went to court, he achieved a result. Now, can
4 you say beyond a reasonable doubt that he isn't entitled
5 to \$1,550? Who is to say where he does in fact perform
6 a service, and achieves a result, who is to say that his
7 amount is wrong?

8 MR. BUCHWALD: I think that --

9 THE COURT: Beyond a reasonable doubt. I'm
10 sorry.

11 MR. BUCHWALD: Our position, your Honor, would
12 be that in these situations where he does appear and gets
13 a result that if we were looking at the one count in an
14 isolated fashion we might come down to the line of reasonable
15 doubt, and that here we have to look at the totality.
16 Not only all of the bills and the pattern of billing and
17 the amounts and applying to some life experience with
18 respect to the amounts, but going beyond that his nego-
19 tiations as chief counsel with Cunningham & Kaming, where
20 he insisted that they contact him first before they pro-
21 ceeded, that the bills be limited to \$1,000 per case, that
22 the bills be paid only after the work was performed.

23 We have here his own, again, just his own, he
24 says his own standing in the community, but there is, there
25 are no examples, there are no situations that people coming

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2 Mr. Clayton, on the phone, and this is Mr. Clayton's
3 testimony and we would submit that Mr. Clayton was a
4 very credible witness, why does he tell Mr. Clayton on
5 the phone "This is a union situation. They are out on
6 strike. Try to keep the bill down". Clayton says, "Well,
7 250 is the minimum fee under the Suffolk County schedule."

8 If it is really good faith. If it is good
9 faith judgment or valuation on his part that this is
10 his worth, why isn't he more candid in the billing?
11 Why isn't he, why isn't he making more money when it comes
12 to non-union situations? Why is he putting a limit on
13 Cunningham & Kaming bills which he deals with earlier?
14 Why is he urging Clayton to keep the bill down because
15 it is a strike situation? Why isn't he sending copies
16 of the bills to the members themselves if they have a
17 complaint?

18 THE COURT: On this question of how you deal
19 with the cases or how I deal with the cases where there
20 were favorable dispositions I would like to ask you,
21 you've got John Toomey, this is a case where there was
22 a disposition, plea to disorderly conduct, and let's
23 considerable it favorable. It was certainly a plea to
24 a lesser charge than originally made. He bills \$5,400.
25 Now, would you consider that his work was about the same

or was it less than in say, the Califra case or the Cassidy case and he got dispositions and he billed 1,375 and he billed 1,500? My point is this, I am considering, and this is a consideration unfavorable to the defendant I suppose, that if you are talking about the achievement of results and that establishes some basis for a bill of some amount I do not understand why -- probably we will get to this when we get to the defense's argument -- why you would have erratically different amounts for the same thing if they are the same thing? Do you get my question?

MR. BUCHWALD: Yes, I do, your Honor, and again if I could try to answer it twofold.

THE COURT: Incidentally did I ask you what the charge was against Califra and what the exact disposition was?

MR. BUCHWALD: Yes, your Honor, with respect to Mr. Califra the charge was disorderly conduct and the disposition was --

THE COURT: Try to answer my question briefly, and I must say we have to get to hear the defense summation and finish this. I'm sure we could go on tremendous detail and I have asked to slow down so I'm not criticizing you to any degree, Mr. Buchwald, but I think the time has come that both of us have to resist

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2 issued to Mr. Capanegro as well as to everybody else. He
3 never produced them.

4 Your Honor, I was waiting for one word to show
5 deliberate conscious state of mind of guilt rather than a
6 sloppy, disorganized guy who was sending out inartful,
7 ridiculously worded bills, but handling 54 cases and without
8 one person going to jail and with a nexus either with the
9 client directly or with the call from the Union in each
10 and every one of the cases for which he was indicted and
11 in each and every one of the cases for which he was not
12 indicted.

13 THE COURT: Look, let's put aside for the
14 moment cases where a result was achieved. There are a
15 couple of things you said in the last few minutes where
16 you were summarizing the situations.

17 MR. COHN: Yes, your Honor.

18 THE COURT: And you used the words "was available
19 Okay. Then you said where there is a nexus with the Union.
20 I suppose the most troublesome thing to me from your stand-
21 point are the cases where -- and I'm not trying to say
22 whether there are three or four, but without getting, you
23 know what I'm talking about -- the cases where I think I
24 could safely say that at the time the bill was rendered,
25 and this bill say for a thousand-plus or something like

1 that, no service had been performed, except perhaps receiving
2 word that there might be a case. You don't have a
3 retainer. You just have word that there might or might
4 not be a case, services might or might not be required,
5 and I questioned Mr. Capanegro about this beginning at
6 page 1107, and that was about Count 5. Just give me a
7 second.
8

9 MR. COHN: Surely, your Honor.

10 THE COURT: All right. Count 5, \$1,075 in bill-
11 ing. A description which I would say could justify \$1,075
12 if the legal briefs -- I'm not crying to quibble about the
13 language. I'm just saying that if I read that bill on its
14 face and the things that were referred were things of sub-
15 stance, \$1,075 would be a perfectly reasonable bill if it
16 went on.

17 Now the problem there is that this was not a
18 situation where there was even a potential charge. He
19 wasn't a defendant. There was no charge against him. I
20 would say he wasn't even retained. He performed no services,
21 and in his testimony to me beginning at 1109, basically he
22 admitted that at the time of the bill it was a situation
23 he was available, and he ended up saying, "It's worth
24 something to be available."

25 Well, I can't square that with really anything

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2 you've told me about achieving results. There wasn't any
3 result there.

4 MR. COHN: Okay.

5 THE COURT: I'm just trying to articulate my
6 problem.

7 MR. COHN: All right, your Honor. Insofar as
8 the Radloff case is concerned, of course, your Honor,
9 there are --

10 THE COURT: Let me emphasize it. This was one
11 case, you know, but this is typical of several thousand
12 dollars of these bills.

13 MR. COHN: Right. The maximum total you can
14 get on these type of bills, your Honor, comes to \$7,250,
15 I believe, because I've added it up. Now insofar as this
16 is concerned, I would say two things, your Honor. First
17 of all, in every single case, including Radloff, he was
18 consulted, he was asked for advice. Radloff testified
19 that he called -- the incident occurred. He was referred
20 to Capanegro. He spoke to the shop steward, Mr. Stella
21 spoke to Carnivale. They recommended Capanegro. He
22 called Capanegro, told him what had happened. Capanegro
23 gave him advise as to how to file and what to do and to
24 go to the police and file a complaint and go on from there.
25 He sends out an in futuro bill for services.

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2 conference with the Union or the meeting with Mr. Radloff
3 and the brief advice given to him is in retrospect worth
4 \$1,075. But when your Honor gets this, not in one case,
5 but say in four cases out of 54 cases where in the other
6 50, or let's say in 40 of them there were court appearances,
7 favorable dispositions, people working for the Telephone
8 Company who pleaded guilty as the result of complaints
9 which were made and which Mr. Capanegro participated in
10 without one person doing a day in jail and seven months'
11 span worth of work with a nexus in every case, can they
12 then ask your Honor to go back to four in futuro bills
13 and say, I am going to impose a capital sentence on this
14 man beyond a reasonable doubt by finding that at the time
15 he dictated these couple of lines when Mr. Radloff had
16 called him on the phone, and he sent out this bill, that
17 he was beyond a reasonable doubt extracting and embezzling
18 money from this Union?

19 THE COURT: Well, look, I would -- I think I
20 would agree with you if you had 54 items on this set of
21 bills and I guess that's about what you have, and if
22 there were isolated instances of whatever the words that
23 we come up with in this case -- if there were four out of
24 54 or some number like that, but I have gone over not only
25 the things in the indictment but I went over reasonably

carefully all those others, and in my view of what is realistic, and it may be much different from yours, that the problem is of a great deal larger magnitude than that.

I want to not just give you a commentary, but I'm not trying to do that. I want to pose again a question or problem in my mind and see what you can do. The whole question of language of the bill, again I think I've already announced my framework. I would not be persuaded under any circumstances to convict of a crime because of a quibble or my editorializing about the bill, and I know legal bills have formulas that somehow don't quite, you know, say rendered when it may be to be rendered. I know that sometimes, very odd formulas. So you don't have to argue with me about that.

The problem in my mind is that the way I read these bills is that there is quite a particularization which on its face does a very good job of justifying these amounts. The amounts differ. There isn't any standard retainer or anything like that. There is a breakdown in many cases of people who went to court together. They are sometimes split, sometimes not. Sometimes they are split and the split of course increases the total when they are split, separate writeups for each person.

Now this gives me a problem in accepting your

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2 argument when I see not quibbling little differences of
3 language but really impressive language which would justify
4 large bills, but if you take it away, if in case after case
5 you take away the phrase "trial or the case" and you take
6 away the phrase "appearances, adjourned dates," then I've
7 got to say that you'd have a lot different-looking bill,
8 and what I am ultimately confronted with is the question
9 of whether this isn't enough to really prove beyond a
10 reasonable doubt that this was a contrived fraud and some-
11 body figured this out. Somebody decided what to split and
12 what not. Somebody put this language in. And it's
13 Mr. Capanegro who did it. I'm posing that again as a
14 problem in trying to tell you that this is the problem
15 I have in accepting your argument and I would like you
16 to respond to it.

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18 MR. COHN: My first response to your Honor is
19 that there was no testimony in this case that any of the
20 descriptive language had any influence or bearing upon the
21 payment of any one of those bills. Your Honor, shouldn't
22 they have put Carnivale or Fitzgerald who approved the
23 bills, signed the checks, on the witness stand to say,
24 if this language had not been in we wouldn't have paid?
25 Your Honor, go back to what you know probably better than
I do, the common law of embezzlement. The United States

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